

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

PARENTS FOR EDUCATIONAL AND RELIGIOUS LIBERTY
IN SCHOOLS; AGUDATH ISRAEL OF AMERICA; TORAH
UMESORAH; MESIVTA YESHIVA RABBI CHAIM BERLIN;
YESHIVA TORAH VODAATH; MESIVTHA TIFERETH
JERUSALEM; RABBI JACOB JOSEPH SCHOOL; YESHIVA
CH'SAN SOFER – THE SOLOMON KLUGER SCHOOL;
SARAH ROTTENSREICH; DAVID HAMMER; ABRAHAM
KAHAN; RAPHAEL AHRON KNOPFLER; and ISAAC
OSTREICHER,

Petitioners,

For a Declaratory Judgment and a Judgment Pursuant to Article 78
of the Civil Practice Act and Rules

-against-

BETTY ROSA, as Chancellor of the Board of Regents of the State
of New York; and MARYELLEN ELIA, as Commissioner of the
New York State Education Department,

Respondents.

**VERIFIED
PETITION**

1. By and through their undersigned counsel, Troutman Sanders LLP, Petitioners Parents for Educational and Religious Liberty in Schools (“PEARLS”), Agudath Israel of America, Torah Umesorah; Petitioners Mesivta Yeshiva Rabbi Chaim Berlin, Yeshiva Torah Vodaath, Mesivtha Tifereth Jerusalem, Rabbi Jacob Joseph School, and Yeshiva Ch’san Sofer – The Solomon Kluger School (the “Yeshiva Petitioners”); and Petitioners Sarah Rottensreich, David Hammer, Abraham Kahan, Raphael Ahron Knopfler, and Isaac Ostreicher (the “Parent Petitioners”) (collectively, “Petitioners”) respectfully allege on knowledge as to their own actions, and upon information and belief as to the actions of others and matters of public record, as follows:

Preliminary Statement

2. For more than one hundred years, Orthodox Jewish yeshivas in New York have been caring for and educating students. Graduates of these yeshivas have maintained their religious practices and beliefs while fully participating in every aspect of New York life. Today, these graduates include doctors and department heads at its leading hospitals; professors and department chairs at its leading universities; partners at its major law and accounting firms; managing directors at its leading investment banks; elected and appointed government officials; teachers, nurses, computer programmers, entrepreneurs, manufacturers, builders, scholars, and employees of every stripe.

3. Central to the success of these individuals and their communities is the system of private schools in which they were educated. In these schools, students are taught that education ranks as the highest value of all. They learn the values of charity, morality, humility, personal responsibility, community, and responsibility to others. They are exposed at a young age to an education that prizes academic rigor and values critical thinking and analytical skills.

4. Parents choose these schools, with their substantial tuition payments, instead of the public schools because they want their children to have an education that is rooted in Jewish texts and informed by Jewish morality, history, culture, ideals, and hopes. They hope that their children grow into citizens with values consistent with their own.

5. On November 20, 2018, the New York State Education Department (“NYSED”) attempted to impose a new comprehensive regulatory regime on all private schools, including all yeshivas and other private schools, in the State of New York.

6. Under the guise of issuing “updated guidance,” the NYSED issued what it calls the “Substantial Equivalency Review and Determination Process” (the “New Guidelines”). These

New Guidelines contain a comprehensive set of rules, checklists, requirements, and procedures that every private school must comply with. The New Guidelines also require every local school district to inspect every private school within the district and to enforce its requirements.

7. The New Guidelines set forth in exhaustive detail what – and how – a private school must teach in order to be deemed to be providing its students with an education that is, in the language of Education Law § 3204, “substantially equivalent” to the instruction provided at local public schools. If a private school is found to be in noncompliance with the rules, checklists, requirements, and procedures promulgated by the NYSED, children who continue to attend the school will be deemed truant, and their parents will be deemed to be in violation of New York State’s compulsory education law and will be subject to fines and imprisonment. N.Y. Educ. Law §§ 3212, 3233.

8. The penalties for a private school that is not deemed to be providing “substantially equivalent” instruction include disallowing students who qualify for textbook, busing, and lunch aid from utilizing that aid at such a school, and directing parents whose children are enrolled at the school to transfer them to another school. In other words, a finding of noncompliance with the New Guidelines subjects a school to closure.

9. Through its New Guidelines, the NYSED has divested yeshivas and other private schools of their right and ability to determine the content of the education they provide, and the process by which that education is delivered. Failure to conform to the NYSED’s hundreds of pages of “Learning Standards,” to accede to local school districts’ views of how those Learning Standards should be presented, or to acquiesce to regulators’ views of which personnel should be hired, would subject schools to closure.

10. The mere threat that regulators will exercise such power undermines the autonomy of religious and other private schools and exerts an inappropriate pressure on the schools, with the effect if not purpose of altering their individual missions by demanding conformity to purposes and methods embodied in the New Guidelines.

11. The New Guidelines cannot stand. The New York Court of Appeals previously has struck down a much less pervasive school licensing regime, even though the Legislature had specifically authorized NYSED to create it. *See Packer Collegiate Institute v. University of State of New York*, 298 N.Y. 184, 194 (1948) (“it would be intolerable for the Legislature to hand over to any official or group of officials an unlimited, unrestrained, undefined power to make such regulations [governing private schools] and to grant or refuse licenses to such schools depending on their compliance with such regulations”; striking down statute authorizing the NYSED to license private schools).

12. There are four basic reasons why the New Guidelines must be enjoined as unlawful.

13. *First*, the NYSED’s New Guidelines transform the substantial equivalence standard in Section 3204 into something it was never intended to be: a *de facto* licensure requirement for all private schools. Under the NYSED’s New Guidelines, private schools will be shut down if they are found to be in noncompliance with the dozens of mandatory requirements included in the New Guidelines. But Section 3204’s substantial equivalence standard was not intended to – and does not – authorize the NYSED to create a *de facto* licensure regime for private schools. Indeed, the standard is not even directed to private schools, but instead at parents who choose not to send their children to public schools. For that very reason, the NYSED’s previously issued guidance regarding the substantial equivalence standard expressly acknowledged that it does not provide the NYSED or local school officials with authority to oversee or supervise the administration of

private schools: “[T]he board’s responsibility is to the children living in the district; it has no direct authority over a nonpublic school.” Exhibit A, p. 1. Moreover, Education Law § 5001 exempts most private schools “providing kindergarten, nursery, elementary or secondary education” from any licensure requirement. N.Y. Educ. Law § 5001(2)(b). In any event, *Packer Collegiate* does not permit the NYSED to craft a regulatory regime to license private, religious schools absent specific direction from the Legislature. For this reason alone, the NYSED’s New Guidelines should be rejected as inconsistent with governing law.

14. *Second*, the NYSED’s New Guidelines create highly intrusive, detailed, rigid, statewide standards for both the curriculum that schools must offer and for determining whether children attending private schools are receiving substantially equivalent instruction. They include, among other things, mandatory “Learning Standards” running into the many hundreds of pages; minimum hours of instruction for each course of study; regulator reviews of teachers’ lesson plans; and regulator evaluations of teacher hiring standards and processes. But the plain language of Section 3204 does not permit these types of highly intrusive, detailed, rigid, statewide standards. Section 3204, in fact, creates a flexible standard that is intended to vary from school district to school district and from school to school. Moreover, courts interpreting Section 3204 have long recognized that it creates a “flexible,” “comparative” standard – rather than a “singular statewide standard” – and that it thus allows for “variations from district to district.” *Blackwelder v. Safnauer*, 689 F. Supp. 106, 126-27, 135 (N.D.N.Y. 1988); *see also Matter of Kilroy*, 467 N.Y.S.2d 318, 320 (Fam. Ct. 1983) (noting that a court must ascertain “whether the child is receiving instruction substantially equivalent in time and quality to that provided in the public school of the home district” (emphasis added)); *Matter of Falk*, 441 N.Y.S.2d 785, 789 (Fam. Ct., Lewis Cty.1981) (noting that the court must “determine whether respondents have afforded their son

instruction substantially equivalent to *other first graders* at the Glenfield Elementary School” (emphasis added)). The NYSED’s New Guidelines ignore the plain language of Section 3204 and courts’ prior interpretations of it. In any event, under *Packer Collegiate*, such a detailed and intrusive regulatory regime is not permitted unless it has been specifically crafted and tailored by the Legislature. Again, for this reason alone, the NYSED’s New Guidelines should be rejected as contrary to governing law.

15. *Third*, the NYSED failed to comply with the procedural requirements that apply to rule-making. Under New York law, a “rule” is “a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers,” *Roman Catholic Diocese of Albany v. New York State Dep’t of Health*, 66 N.Y.2d 948, 951 (1985), or a “general course of operation to be effective for the future,” *People v. Cull*, 10 N.Y.2d 123, 127 (1961). Applying that standard, the New Guidelines are plainly a rule – they not only impose rigid and mandatory procedures and standards on private schools, but demand compliance by threatening private schools with significant penalties, including penalties that would shut down any non-compliant private school. Notice-and-comment rulemaking would have exposed the unlawful and untenable nature of the New Guidelines before they went into effect. The NYSED’s New Guidelines therefore must also be rejected because the NYSED failed to follow the procedural requirements that apply to rule-making under the State Administrative Procedure Act (“SAPA”) and the New York State Constitution. *See, e.g.*, N.Y. A.P.A. Law § 202; N.Y. Const. Art. IV, § 8.

16. *Fourth*, the NYSED’s New Guidelines violate both the United States Constitution and the New York Constitution. Indeed, as demonstrated below, the NYSED’s New Guidelines would effectively frustrate the Petitioners’ constitutionally protected right to the free exercise of

religion through a series of onerous requirements; would effectively frustrate the Petitioners' constitutionally protected free speech rights by dictating what can and cannot be taught in yeshivas; would effectively frustrate the Petitioners' constitutionally protected due process right to control the upbringing and the education of their children, as recognized by *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Meyer v. Nebraska*, 262 U.S. 390 (1923); and would hamper and inhibit the educational system that is central to Petitioners' way of life, raising issues similar, and relevantly indistinguishable, to those addressed by the United States Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

17. For each of these reasons, and for the additional reasons provided below, Petitioners seek a declaration that the NYSED's New Guidelines are null and void, and a judgment enjoining Respondents from enforcing the New Guidelines because they are contrary to law, arbitrary and capricious, and an abuse of discretion.

Jurisdiction and Venue

18. This Court has jurisdiction pursuant to Civil Practice Law and Rules ("C.P.L.R.") §§ 7801-7806 to review the actions of a governmental office whose determination was based in an error of law, was arbitrary or capricious, or was an abuse of discretion. *See New York City Health & Hosps. Corp. v. McBarnette*, 84 N.Y.2d 194, 205 (1994) (holding that a claim that challenging a rule as inconsistent with governing law may be brought under C.P.L.R. § 7803(3)). This Court also has jurisdiction pursuant to C.P.L.R. § 3001 to issue a declaratory judgment as to the rights and other legal relations of the parties to this justiciable controversy. *See Klostermann v. Cuomo*, 61 N.Y.2d 525, 538 (1984) ("The primary purpose of declaratory judgments is to adjudicate the parties' rights before a 'wrong' actually occurs in the hope that later litigation will be unnecessary.").

19. Venue in the County of Albany is proper pursuant to C.P.L.R. § 506(b)(2) because Petitioners assert claims against the Commissioner of Education. *See We Transp., Inc. v. Bd. Of Educ. of Uniondale Union Free Sch. Dist.*, 462 N.Y.S.2d 286, 287 (3d Dep't 1983) (citing C.P.L.R. § 506(b)(2) and noting that “[v]enue is properly set in Albany County when this petition was originally brought because the Commissioner of Education was named as a respondent”).

Petitioners

20. **Petitioner PEARLS** is a non-profit organization based in Brooklyn, New York. Its mission is to protect the fundamental right of parents to choose a yeshiva education for their children, and to facilitate the preparation and implementation of a uniform secular studies curriculum that is both Common Core compliant and culturally sensitive to the values of yeshiva students. The schools that it works with are in New York, and are affected by the New Guidelines.

21. **Petitioner Agudath Israel of America** was founded in 1922, and is a national Orthodox Jewish organization headquartered in New York, with offices, chapters, affiliated synagogues, and constituents across North America. Agudath Israel has been at the forefront of advocacy on behalf Orthodox Jewish interests and rights, perhaps most significantly on behalf of the broad Orthodox Jewish school community, and has been active in legislative bodies, executive agencies, and judicial forums on a wide array of issues affecting that community. Thousands of members of Agudath Israel send their children to Yeshivas that are affected by the New Guidelines.

22. **Petitioner Torah Umesorah: National Society for Hebrew Day Schools** serves as the pre-eminent support system for Jewish Day Schools and yeshivas in the United States, providing them with a broad range of services. Its membership consists of over 675 day-schools and yeshivas with a total student enrollment of over 200,000 students. Most of those schools and students are in New York, and are affected by the New Guidelines. Its mission is to ensure that

every child in the schools it services receives the highest standards of Torah education, along with the skills to lead a successful life and become a productive member of society.

23. **Petitioner Mesivta Yeshiva Rabbi Chaim Berlin** was established in 1904 in Brooklyn, New York, and has been in continuous operation since that time. It is still located in Brooklyn, where it operates a K-12 school, as well as undergraduate and graduate programs.

24. **Petitioner Yeshiva Torah Vodaath** was established in 1918 in Brooklyn, New York, where it has been in continuous operation since that time. The yeshiva operates a K-12 school, as well as undergraduate and graduate programs.

25. **Petitioner Mesivtha Tifereth Jerusalem** was established in 1907 on the Lower East Side of Manhattan. The yeshiva has been in continuous operation since that time, and currently operates two campuses: a K-12 school and undergraduate and graduate programs on the Lower East Side, and a high school and undergraduate and graduate programs on Staten Island.

26. **Petitioner Rabbi Jacob Joseph School** was founded in 1899 on the Lower East Side of Manhattan, and has been in continuous operation since that time. Its affiliated elementary schools currently operate on Staten Island. It received its charter from the Board of Regents in 1903.

27. **Petitioner Yeshiva Ch'san Sofer –The Solomon Kluger School** is the successor to Yeshiva Rabbi Solomon Kluger, which was founded on the Lower East Side of Manhattan in 1902. The school moved to Brooklyn in 1948, where it now operates a boys K-12 school as well as an undergraduate program.

28. The Petitioner Yeshivas are the original Orthodox day schools that were founded in New York. At between one hundred and one hundred and twenty years old, they have been operating continuously since shortly after “substantial equivalence” first appeared in the Education

Law in 1894. Since that time, they have collectively produced tens of thousands of graduates who have participated successfully in New York and American society. Their graduates have succeeded in every professional field and are highly functioning and contributing members of New York and American society. They also have contributed to the rejuvenation of Orthodox Jewish life and practice in New York and beyond.

29. Compliance with the New Guidelines would require each Petitioner Yeshiva to revise its curriculum and alter its emphasis on Jewish Studies.

30. **Sarah Rottensreich** lives in Manhattan where she works as the Executive Director of Chabad of Gramercy Park and is a highly regarded early childhood educator, leader, and author. She is the mother of three school-age children, each of whom is enrolled in a yeshiva that is affected by the New Guidelines.

31. **David Hammer** lives in Brooklyn where he works as the chief executive officer of a building services company. He is the father of six school-age children, each of whom is enrolled in a yeshiva that is affected by the New Guidelines.

32. **Abraham Kahan** lives in Brooklyn, New York, where he works as an accountant. He is the father of four school-age children, each of whom is enrolled in a yeshiva that is affected by the New Guidelines.

33. **Raphael Ahron Knopfler** lives in Brooklyn, New York, where he works as a systems specialist at Con Edison. He is the father of four school-age children, each of whom is enrolled in a yeshiva that is affected by the New Guidelines.

34. **Isaac Ostreicher** lives in Brooklyn, New York, where he works as an accountant. He is the father of a school-age child who is enrolled in a yeshiva that is affected by the New Guidelines.

35. Parent Petitioners choose yeshiva education for their children to fulfill the Biblical injunction that “You shall place these words of Mine upon your heart and upon your soul . . . and you shall teach them to your children to speak in them.” Deuteronomy 11:18-19. This follows the example of Abraham, about whom it is written, “I have known him because he commands his sons and his household after him, that they should keep the way of the Lord.” Genesis 18:19.

36. Yeshivas are a means of fulfilling that Biblical injunction because they incorporate religious instruction into every aspect of their curriculum. The Second Circuit has recognized that point in describing yeshiva education:

Even general studies classes are taught so that religious and Judaic concepts are reinforced. . . . In an effort to provide the kind of synthesis between the Judaic and general studies for which the school aims, the curriculum of virtually all secular studies classes is permeated with religious aspects, and the general studies faculty actively collaborates with the Judaic studies faculty in arranging such a Jewish-themed curriculum.

Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 344-45 (2d Cir. 2007).

Respondents

37. **Respondent Betty Rosa** is Chancellor of the Board of Regents. The Board of Regents is a governmental agency responsible for establishing “rules for carrying into effect the laws and policies of the state, relating to education.” N.Y. Educ. Law § 207. The Board of Regents appoints a Commissioner to be the chief administrative officer of the New York State Education Department (“NYSED”), and the NYSED, in turn, is responsible for the “general management and supervision of all public schools and all of the educational work of the state.” N.Y. Const. art. V, § 4; *see also* N.Y. Educ. Law § 101.

38. **Respondent MaryEllen Elia** is the Commissioner of the NYSED. *See* N.Y. Educ. Law § 101. As the chief executive of the NYSED, Commissioner Elia is responsible for enforcing

all “laws relating to the educational system of the state” and executing “all educational policies determined upon the board of regents.” N.Y. Educ. Law § 305.

Statement of Facts

A. New York State’s Compulsory Education Law

39. New York law requires parents to provide their school-age children with “full-time instruction.” N.Y. Educ. Law §§ 3205(1), 3212(2)(b). That compulsory education requirement is intended to ensure that “children are not left in ignorance, [and] that from some source they will receive instruction that will fit them for their place in society.” *People v. Turner*, 98 N.Y.S.2d 886, 888 (4th Dep’t 1950). Any violation of the compulsory education law risks criminal sanctions, including imprisonment. N.Y. Educ. Law § 3233. Parents satisfy their duties under New York’s compulsory education law by having their children attend parochial schools. N.Y. Educ. Law § 3212(d) (absolving parents of children in local parochial schools from furnishing proof of attendance upon required instruction).

40. As the New York Court of Appeals has held, “[p]rivate schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools.” *Packer Collegiate Inst. v. Univ. of State of New York*, 298 N.Y. 184, 191-92 (1948); *see also Judd v. Bd. of Educ. of Union Free Sch. Dist. No. 2, Town of Hempstead, Nassau Cty.*, 278 N.Y. 200, 220 (1938) (“The Legislature recognizes the right of parents to send their children for instruction to schools other than public schools. It could not do otherwise consistently with the Fourteenth Amendment to the United States Constitution.”); *Matter of Falk*, 441 N.Y.S.2d 785, 788 (Fam. Ct. Lewis Cty. 1981) (“Parents have the right to provide their children a basic education in a privately operated system.”).

41. Consistent with those constitutional limitations, New York’s compulsory education scheme does not rigidly prescribe the mode or method of instruction that parents who choose

private schools must arrange for their children. Instead, since at least 1894, parents have only been required to provide their school-age children with instruction that is – as Section 3402 still provides – “substantially equivalent” to the instruction they would receive in their local public school:

Instruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

N.Y. Educ. Law § 3204(2); *see also Matter of Falk*, 441 N.Y.S.2d 785, 788 (Fam. Ct. Lewis Cty. 1981) (noting that the Laws of 1894 provided that “instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides”).

B. The Substantial Equivalence Standard

42. While the phrase “substantially equivalent,” has not been defined, some content has been given to the standard.

43. As an initial matter, the Legislature has mandated that children attending private schools receive at least as many hours of instruction as children attending public schools. N.Y. Educ. Law § 3210(2) (“If a minor included by the provisions of part one of this article attends upon instruction elsewhere than at a public school, he shall attend for at least as many hours, and within the hours specified therefor.”).

44. In addition, the Legislature has mandated that some courses must be taught by all schools, while otherwise leaving private schools with broad discretion as to how they go about satisfying the purpose of New York’s compulsory education law. The Legislature, for instance, has provided that instruction may “not be deemed substantially equivalent” to that provided in a local public schools unless certain subjects are taught – specifically, courses in patriotism, citizenship, and human rights (N.Y. Educ. Law § 801(1)); courses in the history, meaning, significance and effects of the provisions of the U.S. Constitution, the Declaration of

Independence, and the New York Constitution (N.Y. Educ. Law § 801(2)); courses in physical education (N.Y. Educ. Law § 803); courses in health education (N.Y. Educ. Law § 804); courses in highway safety and traffic regulation (N.Y. Educ. Law § 806); instruction in fire and emergency drills (N.Y. Educ. Law § 807); and instruction in fire and arson prevention (N.Y. Educ. Law § 808).

45. The Legislature has not imposed mandatory curriculum requirements on private schools beyond the basic citizenship and health and safety courses identified above. For example, pursuant to Education Law § 3204(3) the “course of study for the first eight years” at “full time public day schools” must include instruction in “the twelve common school branches of arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York state and science.” N.Y. Educ. Law § 3204(3). But the Legislature has not provided that private schools must provide the same instruction in those subjects during the first eight years of school. Instead, as to the “twelve common school branches” of instruction, it has said only that private schools must provide “substantially equivalent” instruction. *See* N.Y. Educ. Law § 3204(2).

46. Thus, even as to core subjects of study, the Legislature has acknowledged that private schools are not required to adopt any particular curriculum and have avoided intruding into the content and process by which private schools educate the children in their care.

47. Courts have also interpreted the substantial equivalence standard. For instance, in *Blackwelder v. Safnauer*, the court held that Section 3204 creates a “flexible” and “comparative” standard – rather than a “singular statewide standard” – and that it thus allows for “variations from district to district.” *Blackwelder v. Safnauer*, 689 F. Supp. 106, 126-27, 135 (N.D.N.Y. 1988); *see also Matter of Kilroy*, 467 N.Y.S.2d 318, 320 (Fam. Ct. Cayuga Cty. 1983) (noting that a court

must ascertain “whether the child is receiving instruction substantially equivalent in time and quality to that provided in the public school of the home district” (emphasis added); *Matter of Falk*, 441 N.Y.S.2d 785, 789 (Fam. Ct. Lewis Cty. 1981) (noting that the court must “determine whether respondents have afforded their son instruction substantially equivalent to other first graders at the Glenfield Elementary School” (emphasis added)).

48. In addition, the Court of Appeals already has held that the substantial equivalence standard does not authorize NYSED to issue detailed regulations concerning the curriculum, course offerings and teacher qualifications at private schools. As the court said about a statutory regime that already included the “substantial equivalence” standard, “it would be intolerable for the Legislature to hand over to any official or group of officials, an unlimited, unrestrained, undefined power to make such regulations as he or they should desire, and to grant or refuse licenses to such schools, depending on their compliance with such regulations.” *Packer Collegiate Inst. v. Univ. of State of New York*, 298 N.Y. 184, 192 (1948)

C. The NYSED’s Prior Substantial Equivalence Guidance

49. Before it issued the New Guidelines, the NYSED had issued guidance regarding the substantial equivalence standard.

50. The NYSED’s previously issued guidance explicitly recognized that a local school district has no direct authority over a nonpublic school. Exhibit A, p. 1. As the guidance provided:

[T]he board’s responsibility is to the children living in the district; it has no direct authority over a nonpublic school. (*Id.*)

51. Instead, the previously issued guidance only purported to “advise” parents and local school officials about “current practices in the field” and provide “advice to help” parents and school officials “work together harmoniously” in determining whether the instruction was substantially equivalent.

52. The NYSED's previously issued guidance, in other words, did not purport to mandate, and in fact did not mandate, any specific review-and-approval procedures or standards.

53. The NYSED's previously issued guidance also acknowledged that substantial equivalence does not provide the NYSED or local school officials with authority to conduct periodic and gratuitous reviews or inspections of private schools. Indeed, the NYSED's previously issued guidance acknowledged that private schools should not be subject to any substantial equivalence reviews or inspections unless a "serious concern" arose about the instruction they were providing. Exhibit A, p. 4.

54. Moreover, when a "serious concern" arose regarding the instruction a private school was providing, the NYSED's previously issued guidance provided that any subsequent review or inspection should address only that specific concern:

If, after the discussion, the superintendent of schools concludes that there is a serious problem, the superintendent should discuss it with the District Superintendent, where appropriate, and with the Nonpublic School Service office. If the problem is not resolved at that point, the superintendent should provide to the nonpublic school officials the basis of the question in writing. In addition, the superintendent of schools should, if necessary, ask to visit the nonpublic school at a mutually convenient time *in order to check on the information which led to the assertion of lack of equivalency*. The superintendent should *review materials and data which respond to the assertion* and discuss with the officials of the nonpublic school plans for overcoming any deficiency. Exhibit A, p. 4 (emphasis added).

55. The NYSED's previously issued guidance, in other words, did not interpret the substantial equivalence to permit the NYSED or local school officials to oversee or supervise the administration of private schools, and in fact interpreted it to permit only limited inspections and reviews of the instruction provided by private schools and even then only in very limited circumstances.

D. The NYSED's Updated Substantial Equivalence Guidelines

56. The NYSED's November 20, 2018 Substantial Equivalency Review and Determination Process ("New Guidelines"), which was amended in part on December 21, 2018, goes much further than the previously issued guidance, and in fact is contrary to several fundamental aspects of it.¹ It also violates the Court of Appeals admonition in *Packer Collegiate* that even with a direct grant of legislative authority to license schools (as then existed), the NYSED cannot issue detailed regulations governing private schools.

1. Mandatory Review-And-Approval Procedures

57. As an initial matter, the New Guidelines establish mandatory and rigid procedures for determining whether private school students are receiving substantially equivalent instruction.

58. With respect to those procedures, the New Guidelines state that it is "the responsibility of the local school board (or the Chancellor in the case of nonpublic schools located in New York City) . . . to determine whether a substantially equivalent education is being provided in religious or independent schools." Exhibit B, p. 1.

59. For all private schools, the New Guidelines mandate that "local school officials" – *i.e.*, the "superintendent who serves as the chief executive officer of the district and the educational system or a designee" – must perform the initial substantial equivalence inspections and reviews. Exhibit B, pp. 1-2, 10.

¹ The Substantial Equivalency Review and Determination Process consists of seven separate documents, which are identified on the NYSED's website as the "Substantial Equivalency Guidance" (Exhibit B); the "Substantial Equivalency PowerPoint Presentation" (Exhibit C); the "Local School Authority Review Toolkit" (Exhibit D); the "Nonpublic School Self-Study Toolkit" (Exhibit E); the "Commissioner's Determination Elementary and Middle School Review Toolkit" (Exhibit F); the "Commissioner's Determination High School Review Toolkit" (Exhibit G); and "Frequently Asked Questions on the Substantial Equivalency Guidance" (Exhibit H). See New York State Education Department, Substantial Equivalency, available at <http://www.nysed.gov/nonpublic-schools/substantial-equivalency> (last visited Jan. 31, 2018).

60. The New Guidelines also mandate a timeline and cycle for the substantial equivalence inspections and reviews. They provide that local school officials “will begin to conduct substantial equivalence reviews on behalf of their schools boards using the updated process during the 2018-2019 school year,” and that “[a]ll religious and independent schools will be visited as part of the process and initial reviews for all nonpublic schools within a district shall be completed by the end of the 2020-2021 school year.” Exhibit B, p. 3. They then provide that, after the initial inspection and review, local school officials “should plan to re-visit the religious and independent schools in their district on a five-year cycle” and, between visits, should keep informed “of important information, such as changes in leadership, curriculum, school building locations, grade level served, etc.” Exhibit B, p. 3.

61. The New Guidelines provide for local school districts to review and evaluate essentially every aspect of a school’s educational program; to insist on wholesale revisions of any aspect of the school’s operations to which it objects, under threat of closing the private school; and then, to initiate closure and close down the private school if it rejects the demands.

62. The New Guidelines also require private schools to “[p]repare, compile, and provide [to local school officials] for review documentation needed for substantial equivalency determinations.” Exhibit B, p. 11. The documents to be provided and reviewed reach deep into the operation of the private school, including its policies and practices for hiring and training teachers; its curriculum, lesson plans, textbook choices, and methodology for instruction; and its methods for measuring, evaluating, and improving student performance.

63. Thus, each private school is required to submit, among other things, documentation establishing:

- The qualifications of the its teachers, including its policy for teacher hiring and hiring standards and qualifications, evidence that its instructional staff have qualifications

consistent with its hiring policy, its policy for teacher and staff evaluations, and its policy and schedule for teacher and staff training and professional development. Exhibit E, p. 6; Exhibit F, p. 7; and Exhibit G, p. 6.

- The courses and subjects to be taught and corresponding curricula for each grade level in the school, as well as a description of the curriculum; representative samples of daily, weekly, monthly, and yearly schedules; the framework for teaching and learning in required subjects; sample lesson plans; a list of textbooks or other instructional resources; evidence of textbook / resource use in curriculum and lesson plans. Exhibit E, pp. 3-5; Exhibit F, pp. 4-10; and Exhibit G, pp. 5-9.
- The academic progress of students attending the school in the form of a list of the standardized tests it administers in each grade, data on its students' standardized test scores, its other assessments for progress monitoring, its goals for student achievement and its educational program, its process for administering assessments and analyzing data, its graduation rates (if applicable), and its plan for improving academic outcomes. Exhibit B, p. 9; Exhibit F, p. 11; and Exhibit G, p. 10.

64. The local school districts do not merely have authority to review each aspect of the private school's operations, but also to force changes under threat of closure. The New Guidelines require that schools and local school districts "should work collaboratively to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified [by the local school district]." Exhibit B, p. 6. The "collaboration" envisioned by NYSED is to take place between a private school with its own education vision and values, and a local school district competing with it for students, and with a potentially very different set of values – which is empowered to enforce its vision under threat of closure. If local school officials determine that a private school is *not* providing substantially equivalent instruction, they (1) notify the local board of education of their negative finding, so that the board can then make the final determination via a vote in a regularly scheduled, public board meeting; (2) notify the private school of their negative finding; (3) notify the SORIS of their negative finding; and (4) take steps to shut down the school – *i.e.*, by instructing the parents of the children attending the school that they must enroll their children in a different school, and

by cutting off funds and services that would have otherwise been available to the school. Exhibit B, pp. 6-7.

65. As relevant here, the procedures for certain private schools subject to a determination by the Commissioner are similar, with the most significant difference being that the Commissioner makes the final substantial equivalence determination after receiving a recommendation from local school officials. Exhibit B, pp. 7-9.

2. Mandatory Review-And-Approval Standards

66. The New Guidelines also establish mandatory and rigid standards that must be met for determining whether private school are providing substantially equivalent instruction, and in fact references these standards as “requirements” that must be satisfied.

67. With regard to curriculum, the New Guidelines require private schools to offer a long list of specified courses, including courses not required by statute, to satisfy the substantial equivalence standard.

68. For grades 1 through 6, the New Guidelines, as amended on December 21, 2018, require private schools to offer the following courses at each specified grade level:

Grades 1-4 (8 NYCRR §§100.2, 100.3, 135.3, 135.4)

During grades one through four, all students shall receive instruction that is designed to facilitate their attainment of the State elementary learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • <i>Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3</i> • <i>Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b)</i> 	<input type="checkbox"/>

Grades 5-6 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

During grades five and six, all students shall receive instruction that is designed to facilitate their attainment of the State intermediate learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • <i>Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3</i> • <i>Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b)</i> 	<input type="checkbox"/>

Exhibit E, pp. 13-14.

69. For grades 7 and 8, the New Guidelines, as amended on December 21, 2018, not only require private schools to offer specific courses, including courses not required by statute, but also require private schools to devote 17.5 hours of instruction time each week to those courses:

Grades 7-8 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

The unit of study requirements in the chart below must be met by the end of grade 8 and apply to the two-year span of grades 7 and 8 (unless otherwise noted); they are not annual requirements. For example, one unit of mathematics could be completed in grade 7 and one unit of mathematics could be completed in grade 8. A unit of study means at least 180 minutes of instruction per week throughout the school year or the equivalent (8 NYCRR 100.1[a]).

The unit of study requirements may be met by incorporating, or integrating, the State learning standards into subjects that are not listed below. While doing so, nonpublic schools must meet all unit of study requirements and demonstrate that students are provided with instruction that enables them to achieve the State learning standards.

By the end of grade eight, all students shall be provided instruction designed to enable them to achieve State intermediate learning standards through:	
Mathematics, two units of study	<input type="checkbox"/>
English language arts, two units of study	<input type="checkbox"/>
Social studies, two units of study	<input type="checkbox"/>
Science, two units of study	<input type="checkbox"/>
Career and Technical Education, one and three-fourths unit of study <i>*May be initiated in grade 5</i>	<input type="checkbox"/>
Physical education <i>Ed. Law §803(4); 8 NYCRR §135.4(b)</i>	<input type="checkbox"/>
Health education ² , one half-unit of study <i>Ed. Law §804; 8 NYCRR §135.3</i> <i>*May be provided in grade 6</i>	<input type="checkbox"/>
Visual arts, one half-unit of study	<input type="checkbox"/>
Music, one half-unit of study	<input type="checkbox"/>
Library and information skills, the equivalent of one period per week in grades 7 and 8 <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>
Career development and occupational studies, no unit of study requirement <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>

Exhibit E, pp. 13-14; *see* Exhibit H, p. 3 (acknowledging that 17.5 hours per week requirement)

70. The New Guidelines require the local school district to evaluate and determine whether these mandatory curricular requirements are being met, and to complete that portion of the checklist that imposes the curricular requirements by answering either “Y” or “N” to the question “is the requirement met.”

Statutory and Regulatory Mandates

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
8 NYCRR §§100.2, 100.3, 100.4, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for a detailed list of Program Requirements)	<ul style="list-style-type: none"> Description of curriculum Representative samples of daily, weekly, monthly, yearly schedules Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies Sample lesson plans List of textbooks or other instructional resources Textbook/resource use demonstrated in curriculum and lesson plans Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Exhibit E, p. 5.

71. The New Guidelines do not stop at imposing a uniform curriculum at all of the State's nearly 2000 private schools. They also dictate that instruction may be given only by a “competent teacher” and require (1) every private school to submit documentation regarding the qualifications of its teachers, and (2) local school districts to assess and determine whether this “competent teacher” requirement is met. Again, the local school district reviewer must complete a checklist and answer either “Y” or “N” to the question “is the requirement met.”

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> Nonpublic school policy for teacher hiring standards and qualifications Documentation that instructional staff employed by the school have qualifications consistent with school policy Nonpublic school policy for teacher/staff evaluation Nonpublic school policy and schedule for teacher/staff training and professional development Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

See, e.g., Exhibit E, p. 6.

72. The toolkit also includes a statement immediately under the Title “Program Requirements” which provides that “Learning standards for all grade levels may be referenced at <http://www.nysed.gov/curriculum-instruction>. The link leads to learning standards that consist of hundreds of pages of highly detailed “standards” of instruction.

73. While the blizzard of materials associated with the New Guidelines are intrusive, rigid, and overly detailed, the NYSED provides no guidance on how these materials are to be applied in evaluating individual schools. Schools with exemplary attendance and graduation rates could be deemed noncompliant if the local school district was dissatisfied with its teacher-hiring policies or instruction hours. The New Guidelines are thus entirely ineffective as a means of evaluating performance, but are extraordinarily effective in providing local school districts with authority to alter any aspect of a private school’s operations with which it disagreed.

Argument

I. The New Guidelines transform the substantial equivalence standard into something it was never intended to be, turning it into a *de facto* licensure requirement.

74. The NYSED’s New Guidelines should be rejected because they create a *de facto* licensure regime, but neither Education Law § 3204 nor any other statutory provision authorizes the NYSED to subject all private schools to a licensure requirement.

75. In 1948, the Court of Appeals struck down an attempt by the Legislature to grant the NYSED authority to license private schools because the grant was not accompanied by any legislative direction as to the appropriate procedures and standards to be applied to the licensure requirement. In *Packer Collegiate Institute v. University of State of New York*, 298 N.Y. 184, 194 (1948), the Court of Appeals head that “it would be intolerable for the Legislature to hand over to any official or group of officials an unlimited, unrestrained, undefined power to make such regulations . . . and to grant or refuse licenses to such schools depending on their compliance with

such regulations.” The Court noted that state regulation of private schools was not a “small or technical matter” because the United States Supreme Court has already ruled that “[p]rivate schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools, and that the “Legislature, under the police power, has a *limited* right to regulate such schools in the public interest.” *Id.* at 192. In other words, the Court held that the NYSED general power to enforce the Education Laws did not permit the creation of a *de facto* licensure regime. And yet, here, that is precisely what the NYSED has done with the New Guidelines.

76. Moreover, the Education Law requires some private schools to seek and obtain a license from the NYSED. Section 5001, in fact, provides that “[n]o private school which charges tuition or fees related to instruction and which is not exempted hereunder shall be operated by any person or persons, firm, corporation, or private organization for the purpose of teach or giving instruction in any subject or subjects, unless it is licensed by the department.” N.Y. Educ. Law § 5001(1).

77. The Legislature, however, chose to exempt most, but not all, private schools “providing kindergarten, nursery, elementary or secondary education” from that requirement. N.Y. Educ. Law § 5001(2)(b). Yeshiva Petitioners meet the terms of the statutory exemption.

78. Recognizing these limits on its licensure authority, the NYSED has not previously required otherwise exempt schools to seek or obtain licensure. To the extent it has advanced any licensure or registration regime for these schools, the regimes have been voluntary. *See, e.g.*, N.Y. Comp. Codes R. & Regs. tit. 8, § 125.1 (creating a voluntary registration regime for private nursery schools and kindergartens); N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2 (“Nonpublic schools may

be, and public elementary, intermediate, middle, junior high, and high schools shall be, registered by the Board of Regents . . .”).

79. The NYSED’s New Guidelines attempt to make an end-run around the licensure exemption for private schools providing kindergarten, nursery, elementary, or secondary education by creating a *de facto* licensure requirement for these schools.

80. Under the New Guidelines, a private school will be shut down if it fails to comply with the New Guidelines’ mandatory review-and-approval procedures, or if a local school board official – or, in some circumstances, the Commissioner – determines that it does not provide children with instruction that satisfies the new mandatory course and hour requirements, or any of the other myriad new requirements of the New Guidelines. In other words, the New Guidelines create an involuntary, permission-based barrier to entry and operation – just like any other licensure regime.

81. The NYSED cannot reasonably dispute that the New Guidelines create a mandatory and *de facto* licensure regime. The New Guidelines expressly acknowledge that secondary schools that *voluntarily* register with the Board of Regents are not subject to its mandatory review-and-approval procedures and standards:

If a nonpublic school is registered, the Board of Regents has determined that it is providing substantially equivalent instruction and such State action divests the local school district of authority to determine substantial equivalence locally. Exhibit E, p. 15.

And the New Guidelines “strongly encourage” private schools to *voluntarily register*, noting that the “State Education Department strongly encourages every secondary school to become registered.” Exhibit E, p. 15.

82. Section 3204, however, was not intended to – and does not – authorize the NYSED to create a *de facto* licensure regime for private schools. That is apparent from its plain language,

which does not even suggest a licensure requirement. And it is also apparent because reading Section 3204 to require, authorize, or permit a licensure and registration requirement would violate a fundamental principle of statutory construction, which requires that “statutes relating to the same general subject-matter taken as a whole” and “read together.” *Betz v. Horr*, 276 N.Y. 83, 88 (1937). Applying that rule, Section 3204 cannot be interpreted to require, authorize, or permit a licensure requirement, because Section 5001 expressly exempts private schools “providing kindergarten, nursery, elementary or secondary education” from any such requirement.

83. Moreover, pursuant to the doctrine of constitutional avoidance, New York courts interpret statutes whenever reasonably possible in a manner that avoids serious constitutional questions. *See Beach v. Shanley*, 62 N.Y.2d 241, 254 (1984) (“Courts should not decide constitutional questions when a case can be disposed of on a nonconstitutional ground.”); *People v. Grasso*, 54 A.D.3d 180, 183 (1st Dep’t 2008) (noting the “obligation to construe a statute whenever reasonably possible so as to avoid serious constitutional questions”). Thus, here, the Court should avoid the serious constitutional issues addressed below by ruling for Petitioners on their statutory claims, including by interpreting the Education Law to avoid those difficult constitutional issues.

84. Accordingly, the New Guidelines are inconsistent with governing law, because they create a *de facto* licensure regime, while neither Education Law § 3204 nor any other statutory provision authorizes the NYSED to subject all private schools to a licensure requirement. *See Hodgkins v. Cent. Sch. Dist. No. 1 of Towns of Conklin Et Al., Broome Cty.*, 355 N.Y.S.2d 932, 938 (Sup. Ct. Broome Cty. 1974) (noting that the Board of Regents’ and Commissioner’s “rule-making authority does not, of course, encompass the right to enact regulations in conflict with a statute or at odds with a clearly defined statutory policy”).

II. The New Guidelines create rigid, statewide standards for determining whether children attending private schools are receiving substantially equivalent instruction, but the plain language of Section 3204 does not permit rigid, statewide standards.

85. The NYSED's New Guidelines should also be rejected because they create a rigid, statewide set of curricular and other standards for determining whether children attending private schools are receiving substantially equivalent instruction.

86. That is contrary to the plain language of Section 3204, which acknowledges the differences that exist from school district to school district. It therefore provides that children attending private schools must receive instruction that is "substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides." N.Y. Educ. Law § 3204(2) (emphasis added).

87. Consistent with that approach, the NYSED has created and approved numerous paths to satisfy the substantial equivalence standard that do not mirror the local public school instruction but in fact deviate substantially from it.

- **Homebound instruction.** The NYSED has issued regulations for "homebound" instruction – *i.e.*, instruction when a pupil is unable to attend school due to medical reasons. Under the regulations, homebound elementary school students are only required to have five hours of instruction per week, and homebound high school students are only required to have ten hours of instruction per week. *See* N.Y. Comp. Codes R. & Regs. tit. 8, § 175.21.
- **City-As-School Instruction.** The New York State Department of Education allows some schools to provide only two days of instruction per week, so long as students spend three days a week interning at local businesses. *See* <http://www.businessinsider.com/what-its-like-to-attend-alternative-high-school-2015-3>
- **Part-time, Evening and Parental Schools.** Section 3204(3) provides a series of looser standards for part-time day schools ("such subjects as will enlarge the civic and vocational intelligence and skill"); evening schools ("at least speaking, writing and reading English") and parental schools ("vocational training and for instruction in other subjects appropriate to the minor's age and attainments").

88. In addition, courts interpreting Section 3204 have long recognized that it creates a "flexible," "comparative" standard – rather than a "singular statewide standard" – and that it thus

allows for “variations from district to district.” *Blackwelder v. Safnauer*, 689 F. Supp. 106, 126-27, 135 (N.D.N.Y. 1988); *see also Matter of Kilroy*, 467 N.Y.S.2d at 320; *Matter of Falk*, 441 N.Y.S.2d at 789.

89. The *Blackwelder* court held, in fact, that the flexibility inherent in the substantial equivalence standard is essential to avoiding a violation of parents’ rights under the Free Exercise Clause of the First Amendment:

The “substantially equivalent” standard is flexible enough to allow local school officials sufficient lee-way to accommodate the special requirements of diverse religious groups without sacrificing the vital state interests at issue. There may be cases in which the manner the state enforces the mandate of § 3204 unnecessarily infringes the free exercise rights of particular parents, but the mere possibility that such cases might arise is not enough to invalidate § 3204 on its face. *Blackwelder*, 689 F. Supp. at 135.

90. The NYSED’s New Guidelines ignore the plain language of Section 3204 and courts’ prior interpretations of it and create rigid, statewide standards for determining whether children attending private schools are receiving substantially equivalent instructions. Those rigid, statewide standards include mandatory inspection and review procedures as well as a specific list of curricular and hour requirements they every private school in New York state must implement.

91. In addition to the rigid, statewide standards imposed by the New Guidelines, the New Guidelines also direct local school districts to conduct highly intrusive evaluations of the educational offerings being made by each school and to evaluate and pass judgment on those offerings. Local school boards are directed to evaluate and pass judgment on teacher hiring standards, evaluations, training and professional development. Exhibit E, p. 6; Exhibit F, p. 7; and Exhibit G, p. 6. They are directed to evaluate the courses and subjects to be taught and corresponding curricula for each grade level in the school, as well as a description of the curriculum. Their reviews are to include representative samples of daily, weekly, monthly, and yearly schedules, the framework for teaching and learning in required subjects, sample lesson

plans, a list of textbooks, and evidence of textbook / resource use in curriculum and lesson plans.” Exhibit E, pp. 3-5; Exhibit F, pp. 4-10; and Exhibit G, pp. 5-9. Local school districts are directed to evaluate the academic progress of students attending the school, including the schools’ process for analyzing data, and its plan for improving academic outcomes. Exhibit B, p. 9; Exhibit F, p. 11; and Exhibit G, p. 10.

92. These intrusive inspections were never authorized by the Legislature. As NYSED long has recognized, the substantial equivalence standard is intended to address case-by-case concerns about student truancy, not authorize the creation of a mandatory, rigid, and invasive regulatory regime. Such a regime never was authorized by the Legislature, and therefore must be struck down on separation of powers grounds. *Boreali v. Axelrod*, 130 A.D.2d 107, 114, (3d Dep’t) *aff’d*, 71 N.Y.2d 1 (1987) (striking down anti-smoking regulation because they “effectively usurped the prerogative of the Legislature to establish State policy in direct contravention of the separation of powers doctrine,” despite broad legislative grant of authority).

93. Moreover, even if the Legislature had authorized the type of rigid, invasive and comprehensive type of regime contained in the New Guidelines, such a grant of authority would have been impermissible under the Constitution.

94. Because the New Guidelines create rigid, statewide standards for determining whether children attending private schools are receiving substantially equivalent instruction, direct local school district to conduct invasive evaluations of every aspect of the schools’ operations, and fail to provide metrics to help avoid arbitrary determinations, they are inconsistent with the plain language of Section 3204 and established case law.

95. In addition, NYSED’s New Guidelines fail to provide any criteria for measuring school performance against the rigid standards it identifies. The New Guidelines implicitly and

explicitly empower local school districts to review and evaluate each aspect of private schools' educational offerings, and to demand that private schools alter those offerings in any manner, under threat of potential closure.

96. Accordingly, because the New Guidelines create rigid, statewide standards for determining whether children attending private schools are receiving substantially equivalent instruction, and do not contain any reasonable measurement criteria, they are inconsistent with the plain language of Section 3204 and impermissibly vague, and should be rejected.

III. The NYSED failed to follow the procedural requirements that apply to rule-making under the State Administrative Procedure Act and the New York State Constitution.

97. The NYSED's New Guidelines must also be rejected because the NYSED failed to comply with the procedural requirements that apply to rulemaking.

98. Both the Board of Regents and the Commissioner of the NYSED, when acting pursuant to authority conferred by the Board, may adopt "rules for carrying into effect the laws and policies of the state [] relating to education." N.Y. Educ. Law § 207.

99. But when adopting a rule, both the Board of Regents and the Commissioner must comply with the rule-making procedures established by the State Administrative Procedure Act and the New York State Constitution. *See, e.g.*, N.Y. A.P.A. Law § 202; N.Y. Const. Art. IV, § 8 ("No rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission shall be effective until it is filed in the office of the department of state.").

100. Those rule-making procedures require an agency to provide notice of the proposed rule making to the Secretary of State for publication in the state register and to provide the public an opportunity to submit comments on the proposed rule: "Prior to the adoption of a rule, an agency

shall submit a notice of proposed rule-making to the secretary of state for publication in the state register and shall afford the public an opportunity to submit comments on the proposed rule.” N.Y. A.P.A. Law § 202(1)(a).

101. They also require that the notice “cite the statutory authority, including particular sections and subdivisions, under which the rule is proposed for adoption.” N.Y. A.P.A. Law § 202(f)(i). They require the agency engaged in rule-making to consider “utilizing approaches which are designed to avoid . . . overly burdensome impacts of the rule upon persons . . . directly impacted by it.” N.Y. A.P.A. § 202-a. And they require an agency engaged in rule-making to issue a regulatory impact statement which must include, among other things, statutory authority, needs and benefits, costs, and local government mandates. N.Y. A.P.A. § 202-a(3).

102. NYSED did not comply with any of those requirements when issuing the New Guidelines.

103. As relevant here, the SAPA defines a “rule” as a statement of “general applicability that implements or applies law,” or a statement of “the procedure or practice requirements of an agency.” N.Y. A.P.A. Law § 102(2)(a).

104. Applying that statutory language, the Court of Appeals has held that a rule is “a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers,” *Roman Catholic Diocese of Albany v. New York State Dep’t of Health*, 66 N.Y.2d 948, 951 (1985), or a “general course of operation to be effective for the future,” *People v. Cull*, 10 N.Y.2d 123, 127 (1961). *See also Alca Indus., Inc. v. Delaney*, 92 N.Y.2d 775, 778 (1999) (“Rulemaking, in other words, sets standards that substantially alter or, in fact, can determine the result of future agency adjudications.”); *Connell v. Regan*, 114 A.D.2d 273, 275 (3d Dep’t 1986) (“Where agency

determinations are based solely on a firm, rigid, unqualified standard or policy, a quasi-legislative norm or prescription is established that carves out a course of conduct for the future.”).

105. Because the New Guidelines create rigid, statewide procedures and standards, they are a “rule” as that term is defined in the SAPA.

106. Moreover, the NYSED cannot credibly argue that rule-making is not required here. In 2004, the NYSED wanted to address the standards for determining whether home school students are receiving substantially equivalent instruction as required by Education Law § 3204. At that time, it determined that rule-making was required, and followed the requisite procedures of SAPA to promulgate and issue a new rule. *See* N.Y. Comp. Codes R. & Regs. tit. 8, 100.10; *see also Notice of Revised Rule Making: Requirements for Conferral of a College Degree and Home Instruction*, N.Y.S. Register, Rule Making Activities at 19 (July 14, 2004), *available at* <https://docs.dos.ny.gov/info/register/2004/july14/toc.htm> (asserting that the NYSED “has statutory authority to establish in regulation requirements . . . for the education of students of compulsory school age”). The same requirements that compelled the NYSED to comply with SAPA in 2004 when addressing substantial equivalence of home school students pursuant to Education Law § 3204 exist with even greater force with respect to New Guidelines, which are addressed to schools and not parents.

107. The New York City Department of Education (“DOE”) has demonstrated that it too understands that the New Guidelines constitute regulations. In February 2019, the DOE posted two new job openings on its website for positions as Executive Director for Substantial Equivalency and Senior Director of Operations for Substantial Equivalency. The posting for the Executive Director position indicated that the person filling the position would be responsible for ensuring that the education offered “in approximately 800 nonpublic schools is substantially

equivalent to that in public schools . . . in alignment with New York State Education Department (NYSED) *regulations*.” Exhibit I.

108. Similarly, the posting for the Senior Executive Director position indicated that the person filling the position would ensure that private schools in New York City “meet City and State *regulatory standards*.” Exhibit J.

109. For all of these reasons, the New Guidelines must also be rejected because the NYSED failed to follow the procedural requirements that apply to rule-making under the SAPA.

IV. The NYSED’s New Guidelines violate the Petitioners’ constitutional rights.

110. The NYSED’s New Guidelines should also be rejected because they violate Petitioners’ rights under the United States Constitution and the New York Constitution.

111. ***Free Exercise Clause.*** The First Amendment to the United States Constitution, through the Fourteenth Amendment, forbids States from enacting laws prohibiting or inhibiting the free exercise of religion. The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend. I. By virtue of the Fourteenth Amendment, the Free Exercise Clause is binding on the States. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

112. Similarly, the New York Constitution provides that the “free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind.” N.Y. Const. art. I, § 3.

113. ***Freedom of Speech.*** The First Amendment to the United States Constitution protects freedom of speech. The Free Speech Clause of the First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. CONST. amend. I. The right to free speech, as incorporated by the Fourteenth Amendment, is safeguarded from unlawful impairment by the States. *See Gitlow v. New York*, 268 U.S. 652, 666 (1925). The Free Speech

Clause protects both the speaker of the communication and its recipients. *See Va. St. Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756-57 (1976).

114. Similarly, the New York Constitution provides that “[e]very citizen may freely speak, write and publish his or her sentiments on all subjects” and “no law shall be passed to restrain or abridge the liberty of speech.” N.Y. Const. art. I, § 8; *see also O’Neill v. Oakgrove Const., Inc.*, 71 N.Y.2d 521, 529 (1988) (“The protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the First Amendment.”)

115. The Free Speech Clauses of the United States Constitution and New York Constitution prohibit the government from either restricting or compelling certain speech. “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *Ashcroft v. Am. Civil Liberties Union*, 535 U.S. 564, 573 (2002)). “At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 641 (1994).

116. Laws that act as a deterrent to and chill free speech, even where not directly prohibiting the exercise of free speech, are also subject to constitutional scrutiny. *Bd. of Cty. Comm’rs v. Umbehr*, 518 U.S. 668, 674 (1996). Both compelled speech and restricted speech are afforded identical constitutional protection. *Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 796-97 (1988). Moreover, a content-based regulation is “presumptively invalid.” *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992). Such a regulation is subject to strict scrutiny and will be tolerated only upon a showing that it is narrowly tailored to a compelling government interest. *Turner Broad. Sys.*,

512 U.S. at 642. The New Guidelines violate the free speech rights of Petitioners, by limiting certain of their speech and compelling other speech.

117. ***Due Process Clauses.*** The Fourteenth Amendment to the United States Constitution provides that no State shall “deprive any person of life, liberty, or property without due process of law.” U.S. CONST. amend. I.

118. Similarly, the New York Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” N.Y. Const. art. I, § 6

119. State laws limiting the rights of parents to choose the education for their children violate substantive due process. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Court invalidated a statute that banned the teaching of certain foreign languages to young children in public and private schools. The Court recognized that, among the fundamental liberties protected by the Due Process Clause, “it is the natural duty of the parent to give his children education suitable to their station in life.” *Id.* at 399-400.

120. Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court struck down a statute that compelled parents to send their children to public school. Citing *Meyer*, the Court concluded that the statute “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control,” observing that “rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state.” *Id.* at 534-35. Significantly, the Court reasoned that the government lacks power “to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

121. The central question to emerge from *Meyer* and *Pierce* was what type of law constitutes a *reasonable* regulation of private education, and the Court shed light on that issue in *Farrington v. Tokushige*, 273 U.S. 284 (1927). In *Farrington*, parents of children educated in private foreign language schools in the territory of Hawaii challenged a federal regulation as violating their due process rights under the Fifth Amendment. *Id.* at 290. Among other things, the regulation provided the Department of Public Instruction with the power to prescribe the subjects and courses of study, the entrance and attendance prerequisites or qualifications of education, age, and other considerations, and the text books used in all foreign language schools. *Id.* at 294. The law also proscribed the teaching of subjects and the use of text books outside those permitted by the Department. *Id.* at 295. In striking down the comprehensive law as unconstitutionally regulating private schools, the Court identified the constitutionally problematic aspects of the regulations: “They give affirmative direction concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and text-books.” *Id.* at 298. Due process invalidates laws that “would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful,” because a parent “has the right to direct the education of his own child without unreasonable restrictions.” *Id.*

122. *Meyer*, *Pierce*, and *Farrington* are still binding today. Throughout the past fifty years, the Supreme Court has referenced these cases repeatedly in recognizing parents’ right to direct the education of their children. For example, in *Norwood v. Harrison*, 413 U.S. 455 (1973), the Court cited *Pierce* as holding that “a State’s role in the education of its citizens must yield to the right of parents to provide an equivalent education for their children in a privately operated school of the parents’ choice.” *Id.* at 461. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court

noted that “the interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65; *see also Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015) (citing *Pierce* and *Meyer* as protecting the “rights of childrearing, procreation, and education”); *Zelman v. Simmons*, 536 U.S. 639, 680 n.5 (2002) (Thomas, J., concurring) (“This Court has held that parents have the fundamental liberty to choose how and in what manner to educate their children.”); *Washington v. Glucksburg*, 521 U.S. 702, 720 (1997) (“[T]he ‘liberty’ specially protected by the Due Process Clause includes the rights . . . to direct the education and upbringing of one’s children.”); *Wisconsin v. Yoder*, 406 U.S. 205, 213-14, 232 (1972) (highlighting that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition” and “the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society”); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents . . .”).

123. While the Supreme Court held in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), that courts must apply a lower level of scrutiny in adjudicating most free exercise claims, it also created an important exception to that rule: the so-called “hybrid” free exercise claim. In *Smith*, the Supreme Court reasoned that “[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections.” *Smith*, 494 U.S. at 881. The *Smith* Court identified the “right of parents . . . to direct the education of their children” as an example of such a right, citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

124. In *Yoder*, the Supreme Court had held that a law that compelled school attendance beyond the eighth grade was invalid under the Free Exercise Clause as applied to Amish objectors who claimed that formal education beyond the eighth grade violated their central religious beliefs. The *Yoder* Court applied strict scrutiny to the law, reasoning that “when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a ‘reasonable relation to some purpose within the competency of the State’ is required to sustain the validity of the State’s requirement under the First Amendment.” 406 U.S. at 233. Notably, *Yoder* recognized the “interrelationship of belief with [the Amish] mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization.” *Id.* at 235.

125. The Supreme Court has also held that state authorities may not target religion even in facially neutral laws or regulations. See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2019); *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 567 (1993). A majority of the private schools subject to the New Guidelines are religious schools.

126. **Constitutional Violations.** As the foregoing demonstrates, the NYSED’s New Guidelines would effectively frustrate the Petitioners’ constitutionally protected rights to the free exercise of religion through a series of onerous requirements; would effectively frustrate the Petitioners’ free speech rights by dictating what can and cannot be taught in Yeshivas; would effectively frustrate the Petitioners’ due process right to control the upbringing and the education of their children, as recognized by *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Meyer v. Nebraska*, 262 U.S. 390 (1923); and would inhibit the entire Orthodox and Chasidic community’s education system that is central to Petitioners’ way of life, raising issues similar, if not identical, to those addressed by the United States Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

Claims For Relief

First Claim

127. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 126.

128. Under the NYSED's New Guidelines, all private schools – including Yeshiva Petitioners – will be penalized and perhaps shut down if they fail to comply with the mandatory review-and-approval procedures included in the New Guidelines, or if a local school board determines that they do not meet the numerous requirements that are imposed by the New Guidelines.

129. Neither Section 3204 nor any other provision in New York's compulsory education scheme created or permits a licensure regime for private schools in New York.

130. Petitioners are thus harmed by the NYSED's New Guidelines, which are contrary to law.

131. Accordingly, Petitioners are entitled to a judgement, pursuant to C.P.L.R. § 3001, declaring that the NYSED's New Guidelines are contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's New Guidelines are contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the New Guidelines against them.

Second Claim

132. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 131.

133. The NYSED's New Guidelines create rigid, statewide curricular and other requirements that are necessary for every private school in New York State to fulfill in order to be deemed to be providing substantially equivalent instruction.

134. Neither Section 3204 nor any other provision in New York's compulsory education scheme created or permits a single, statewide set of curricular and other requirements for determining whether parents who choose private schools for their children are in compliance with the compulsory education law. Instead, as courts have held, Section 3204 was intended to create, and in fact creates, a "flexible," "comparative" standard – rather than a "singular statewide standard" – and allows for "variations from district to district." The NYSED's New Guidelines are therefore contrary to law.

135. The NYSED's New Guidelines also do not identify the criteria to be used for measuring school performance against the rigid standards it identifies. The New Guidelines implicitly and explicitly empower local school districts to review and evaluate each aspect of private schools' educational offerings, and to demand that private schools alter those offerings in any manner, and under threat of potential closure.

136. The NYSED's New Guidelines therefore are impermissibly vague.

137. Accordingly, Petitioners are entitled to a judgment, pursuant to C.P.L.R. § 3001, declaring that the NYSED's New Guidelines are contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's New Guidelines are contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the guidance against them.

Third Claim

138. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 137.

139. The NYSED's New Guidelines create a rigid, statewide procedure and standards for determining whether children attending private schools are receiving substantially equivalent instruction, and imposes harsh penalties, including closure, for schools that do not comply with those procedures and standards.

140. Because the NYSED's New Guidelines create rigid, statewide procedures and standards, they are a "rule" as that term is defined in the SAPA. *See* N.Y. A.P.A. Law § 102(2)(a) (defining a "rule" as a statement of "general applicability that implements or applies law," or a statement of "the procedure or practice requirements of an agency"); *see also Roman Catholic Diocese of Albany v. New York State Dep't of Health*, 66 N.Y.2d 948, 951 (1985) (holding that a "rule" is "a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers"); *People v. Cull*, 10 N.Y.2d 123, 127 (1961) (holding that a "rule" is a "general course of operation to be effective for the future"); *Alca Indus., Inc. v. Delaney*, 92 N.Y.2d 775, 778 (1999) ("Rulemaking, in other words, sets standards that substantially alter or, in fact, can determine the result of future agency adjudications."); *Connell v. Regan*, 114 A.D.2d 273, 275 (3d Dep't 1986) ("Where agency determinations are based solely on a firm, rigid, unqualified standard or policy, a quasi-legislative norm or prescription is established that carves out a course of conduct for the future.").

141. Under the SAPA and the New York Constitution, rule-making is subject to various procedural requirements, including notice-and-comment requirements. *See, e.g.,* N.Y. A.P.A. Law

§ 202(1) (requiring, among other things, notice-and-comment procedures); N.Y. Const. Art. IV, § 8 (“No rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission shall be effective until it is filed in the office of the department of state.”).

142. In issuing the New Guidelines, the NYSED did not comply with any of those procedural requirements, and the New Guidelines are therefore contrary to law.

143. Accordingly, Petitioners are entitled to a judgment, pursuant to C.P.L.R. § 3001, declaring that the NYSED’s New Guidelines are contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED’s New Guidelines are contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing them.

Fourth Claim

144. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 143.

145. The Due Process Clause of the Fourteenth Amendment to the United States Constitution affords parents a fundamental, protected right to control the upbringing and the education of their children. *See Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). The New York Constitution provides similar, if not greater protections. *See* N.Y. CONST. art. I, § 6.

146. Parent Petitioners have a protected interest in sending their children to privately-operated schools that inculcate students with instruction consistent with Parent Petitioners’ values and beliefs.

147. The New Guidelines deprive Parent Petitioners of the due process right to control the education of their children through a series of onerous requirements, as detailed above.

148. If they comply with the New Guidelines, yeshivas chosen by Parent Petitioners for their children would be required to alter their curriculum, and their emphasis on Jewish studies and the use of Jewish texts.

149. The NYSED does not have a sufficient interest in prescribing the substantive, secular courses that the yeshivas must teach, the manner in which it must be taught and the timing thereof, and the New Guidelines' requirements are not sufficiently related to any interest in promoting a certain type of education.

150. Accordingly, Petitioners are entitled to a judgement, pursuant to C.P.L.R. § 3001, declaring that the NYSED's purported guidance is contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's purported guidance is contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the guidance against them.

Fifth Claim

151. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 150.

152. The First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, forbids the States from enacting laws inhibiting the free exercise of religion. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The New York Constitution provides similar, if not greater, protections. *See N.Y. CONST. art. I, § 3.*

153. Petitioners have a constitutional right to freely exercise their religious beliefs and practices by providing a religious upbringing for their children. *See Wisconsin v. Yoder*, 406 U.S. 205, 213-14, 232 (1972).

154. Petitioners have a constitutional right to freely exercise their religious beliefs and practices via providing their children with an education that inculcates religious beliefs and values.

155. The New Guidelines violate Petitioners constitutionally protected rights to the free exercise of religion through a series of onerous requirements, as detailed above.

156. Accordingly, Petitioners are entitled to a judgment, pursuant to C.P.L.R. § 3001, declaring that the NYSED's purported guidance is contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's purported guidance is contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the guidance against them.

Sixth Claim

157. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 156.

158. The Free Exercise Clause of the First Amendment affords Petitioners the right to the free exercise of their religion, and the Due Process Clause of the Fourteenth Amendment furnishes Petitioners the right to direct the upbringing of their children. The New York Constitution provides similar, if not greater, protections. *See* N.Y. CONST. art. I, § 3; N.Y. CONST. art. I, § 8.

159. Together, the First and Fourteenth Amendments (and their New York Constitution analogues) provide Petitioners with a hybrid right to control the religious education of their children.

160. Pursuant to the United States Supreme Court's opinions in *Yoder* and *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), that hybrid right to provide for and choose the religious education for their children is afforded heightened constitutional protection.

161. The New Guidelines violate Petitioners' constitutionally protected rights to the free exercise of religion through a series of onerous requirements, as detailed above.

162. Accordingly, Petitioners are entitled to a judgement, pursuant to C.P.L.R. § 3001, declaring that the NYSED's purported guidance is contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's purported guidance is contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the guidance against them.

Seventh Claim

163. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 162.

164. Petitioners have a constitutionally protected right to free speech.

165. The First Amendment to the United States Constitution, through the Fourteenth Amendment, restricts the States from unlawfully compelling speech and impairing the right to free speech. *See Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 796-97 (1988). The New York Constitution provides similar, if not greater, protections. *See* N.Y. CONST. art. I, § 8.

166. The New Guidelines unlawfully compel certain speech and restrict other speech, in violation of Petitioners' First Amendment rights.

167. In particular, the New Guidelines' course requirements burden the free speech rights of Petitioners by compelling that Yeshiva Petitioners deliver certain particular lessons chosen by NYSED, and that those lessons be delivered for a mandated length of time.

168. The New Guidelines also burden the free speech rights of Petitioners by effectively restricting the amount of religious instruction, a form of speech, that Yeshiva Petitioners may provide students.

169. By compelling secular speech and restricting religious speech, the New Guidelines constitute a content-based abridgment of speech and are presumptively invalid. *See R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992).

170. The NYSED has no sufficient justification for its abridgment of this free speech.

171. Accordingly, Petitioners are entitled to a judgement, pursuant to C.P.L.R. § 3001, declaring that the NYSED's New Guidelines are contrary to law and thus null and void; and to a judgment, pursuant to C.P.L.R. § 7803(3), that the NYSED's New Guidelines are contrary to law, arbitrary and capricious, and an abuse of discretion and enjoining Respondents from enforcing the guidance against them.

Eighth Claim

172. Petitioners repeat and reallege, as if fully set forth herein, each of the foregoing paragraphs through 171.

173. Petitioners are likely to succeed on the merits of their challenges to the NYSED's New Guidelines.

174. Unless the Court enters a stay prohibiting the NYSED from implementing and enforcing the New Guidelines, Petitioners will suffer irreparable harm. The New Guidelines require Yeshiva Petitioners to transform the nature and content of the instruction they provide,

thereby frustrating their religious mission, and would alter and limit the choices made by Parent Petitioners to direct the education of their children.

175. Respondents, on the other hand, cannot show that any immediate harm would result from a stay of the implementation and enforcement of the New Guidelines.

176. The balance of the equities favors granting the Petitioners' request for a stay. While Petitioners will suffer substantial and irreparable harms if the requested stay is not issued, Respondents cannot show that they will suffer any harm if a stay is entered to restrain them from implementing and enforcing the New Guidelines and to thus maintain the status quo that has been in place since 1894.

177. Accordingly, and pursuant to C.P.L.R. § 7805, the Court should enter a stay prohibiting Respondents from implementing or enforcing the New Guidelines.

Request for Relief

For all these reasons, Petitioners respectfully request that the Court enter a judgment:

178. Declaring that the NYSED's New Guidelines conflict with governing law and are therefore null and void;

179. Enjoining Respondents Rosa and Elia from enforcing the NYSED's New Guidelines; and

180. Awarding Petitioners such other and further relief as the Court deems just and proper.

Dated: March 7, 2019

s/ Avi Schick _____
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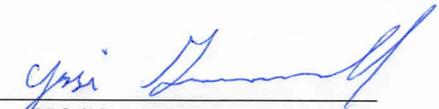
Counsel for Petitioners

VERIFICATION

YOSSI GRUNWALD hereby affirms the following to be true under penalty of perjury:

1. I am the Executive Secretary of Petitioner Parents for Educational and Religious Liberty in Schools ("PEARLS") in this Article 78 proceeding.
2. I make this verification on behalf of PEARLS because PEARLS is a domestic corporation and I am an officer thereof.
3. I have also been authorized to make this verification of behalf of the individual Yeshiva Petitioner schools: Agudath Israel of America, Torah Umesorah, Yeshiva Rabbi Chaim Berlin, Yeshiva Torah Vodaath, Mesivta Tifereth Jerusalem, Rabbi Jacob Joseph School and Yeshiva Ch'san Sofer- The Solomon Kluger School; and the Parent Petitioners: Sarah Rottensreich, David Hammer, Abraham Kahan, Raphael Ahron Knopfler, and Isaac Ostreicher (collectively "Petitioners").
4. Based on my personal knowledge, review of PEARLS and other relevant records, and communications with representatives of the Petitioners, I confirm that the foregoing Petition is true to my knowledge, except as to matter alleged upon information and belief, which matters I believe to be true.

Dated: Brooklyn, New York
March 7, 2019


YOSSI GRUNWALD

BLIMA DEUTSCH
Notary Public, State of New York
No. 01-DE6319510
Qualified in Kings County
Commission Expires 02/23/2023

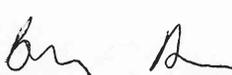
 5/7/19

EXHIBIT A



Nonpublic Schools

As of 11/20/18, please refer to the following link for updated guidance regarding [Substantial Equivalency](#).

Guidelines for Determining Equivalency of Instruction in Nonpublic Schools

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- I. [New Schools](#)
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 - V. [Registration of Secondary Schools and Equivalency](#)
 - VI. [Services to Students](#)
 - [Questions and Answers Relating to Determining Equivalency of Instruction in Nonpublic Schools](#)
 - [Attachment A: State Education Department Resources](#)
 - [Attachment B: Legal References](#)
-

Since 1897, the compulsory attendance law in New York State has required all children between the ages of six and sixteen to be provided with a program of instruction, either at a public school or elsewhere. While the compulsory attendance law protects a child's right to be educated, the State has long recognized the right of parents to choose an alternative to the public school. Churches, temples, mosques, and other groups of people are guaranteed the right to provide educational programs in accordance with their religious beliefs and educational philosophies. Over the years, nonpublic schools have been an integral part of the total educational system of the State.

The object of the compulsory attendance law is to see that children are not left in ignorance, that they receive from some source the instruction that will prepare them for their place in society. If a child attends a nonpublic school or is being educated at home, the board of education of the school district in which the child resides must be assured that the child is receiving instruction which is substantially equivalent to that provided in the public schools. Thus, the board's responsibility is to the children living in the district; it has no direct authority over a nonpublic school.

These guidelines advise that the best way to ensure that every child is adequately served is through open communications and good rapport between public and nonpublic school officials. They are based upon current practices in the field which have proven to be effective. The guidelines also inform parents and school officials of their responsibilities and contain advice to help them work together harmoniously in the best interests of all children.

Questions not covered in the following pages may be referred to Nonpublic School Services, Room 475 Education Building Annex, New York State Education Department, Albany, New York 12234; phone (518) 474-3879.

I. New Schools

The formation of good relationships between nonpublic and public school administrators is a most important and helpful step for both parties. In determining equivalency and in providing requested services to pupils, a good working relationship should lead to fair and equitable treatment. Therefore, the administrator of a new nonpublic school should contact the superintendent of the district in which the nonpublic school is located in the earliest stages of planning. It would be appropriate at the outset for the administrator to describe the goals of the new school, its sponsorship, anticipated date of opening, and grade levels.

Nonpublic schools usually enroll children from a number of districts. It is strongly recommended that the superintendent of schools of the district in which the nonpublic school is located undertake the review to determine equivalency of instruction. Sending districts are encouraged to concur with the judgment of the superintendent and board of education of the district of location in the matter of equivalency.

Within the framework of the Education Law, the local board of education is responsible for assuring that each resident pupil is provided an adequate instructional program. The board usually asks its superintendent of

agent for the board of education, deals with the new school. The review of the school's program need not be undertaken solely by the superintendent; the superintendent may wish to ask other educators from public and/or nonpublic schools to assist. It can be helpful to involve a school principal, curriculum director, guidance person, and/or teacher. In some cases, districts combine to form a team for the review; others engage an outside consultant. Superintendents are encouraged to seek the assistance of the District Superintendent in establishing a review team.

A. Responsibilities of Nonpublic School Administrators

All persons involved in planning and opening a new school should notify the Office of Nonpublic School Services office.

The State Education Department urges any person or group which plans to open a new school to notify the superintendent of schools of the public school district in which the school will be located as early as possible that a new school is being planned. Early notification will provide a basis for a good working relationship.

Prior to the opening of a new school, its administrator should invite the superintendent of schools of the district in which the new school is located to visit the facility. An additional visit is recommended once the school is in operation.

The administrator of the new school should also provide the superintendent of schools of the district in which the school is located with the following:

1. assurance that the building is a safe place for children. The best evidence of this comes from fire inspection reports or, in New York City, a certificate of occupancy issued by the Department of Buildings.
2. a list of names of pupils from the district who will be attending the nonpublic school and the names of other districts in which other pupils reside. These lists will provide data to the district so that it can arrange to provide the services to which those pupils are entitled.
3. a copy of the school calendar for the coming year.
4. a list of grade levels and the total enrollment at each grade level.
5. a list of courses and subjects which will be taught at each grade level in the school.

The new school should show that it plans to instruct pupils in required subjects (see question 24, page 11) and during time periods sufficient to achieve results comparable to those of the public school. Public schools, in order to qualify for maximum State aid, are in session for at least 180 days each school year. While this requirement is not binding on nonpublic schools, the length of the school year and school day in a nonpublic school should approximate that of the public school.

If the new school enrolls pupils from outside the district in which the school is located, the nonpublic school administrator should provide the superintendent of schools of each of the districts which have pupils enrolled in the school with the following:

1. written notification that the new school is opening;
2. a list of the names of pupils from the district who are enrolled in the school; and
3. a copy of the school calendar for the coming year.

Once the superintendent knows about the new school, its location, projected enrollment, and curriculum, there is some basic assurance that its pupils will be provided an opportunity to learn. While it is difficult to review a program before a school opens or even in the early stages of its operation, public school officials need assurance that pupils in a new school are receiving an adequate instructional program. The school will probably need some time to implement all aspects of its program. Such time for growth and development should be allowed and, as it takes place, public school officials should be made aware of the progress.

The essential element is that public school officials are assured that the children are provided with an appropriate and adequate educational program. Information in the next section will help the superintendent gain this assurance.

B. Responsibilities of Public School Superintendents

When a public school superintendent learns that a new school will be established in the district, the superintendent should contact the Nonpublic School Services office. This ensures that the new school will be placed on the Department's mailing list and that the head of a new school will be invited to the

The superintendent should meet with the head of the new school, making arrangements to procure the information listed on pages 2 and 3. The superintendent should also arrange to visit the new school prior to its opening or designate another person or persons to make this visit.

Based on the information received from the new nonpublic school and the on-site visit, if the superintendent ascertains that the new nonpublic school is providing substantially equivalent instruction, the superintendent should notify the board in writing and send a copy of this report to the nonpublic school.

Although the board of education is not required to pass a formal resolution if it determines that the nonpublic school's program is satisfactory, this determination should be a matter of record. It is also recommended that at this time the superintendent, where appropriate, inform the District Superintendent of the findings of the review.

If the information received from the new nonpublic school is not satisfactory, the superintendent should discuss deficiencies with the administrator of the nonpublic school and ascertain whether these deficiencies can be overcome in a reasonable amount of time. They should also agree on a schedule for arriving at satisfactory solutions. At any time during the process, the superintendent or the nonpublic school authorities may call upon the Nonpublic School Services office staff. If deficiencies cannot be remedied or if the school is unwilling to make the necessary program changes and, if, in the superintendent's judgment, the program is not substantially equivalent, the superintendent should so notify the board of education.

At the same time, the superintendent should share this information with boards of education of districts in which pupils attending the nonpublic school live. The superintendent should notify nonpublic school officials of the date on which the board of education will consider the matter of equivalency.

Once a board of education approves a resolution at a public meeting that a nonpublic school is not equivalent, the administrator of the nonpublic school and the parents of pupils attending that school should be notified in writing that the children will be considered truant if they continue to attend that school. Parents should be given a reasonable time in which to transfer their children to either a public school or another nonpublic school. At the end of that time, all transportation, textbooks, and health services should be withdrawn. If parents continue to enroll their children in a nonpublic school whose program has been determined to be not equivalent, they should then be notified that petitions will be filed in Family Court by the public school authorities to the effect that their children are truant.

If the nonpublic school officials and/or parents disagree with the determination of the board of education, they have the right to file an appeal to the Commissioner within 30 days of the board's decision. Information on the appeals process may be obtained from Office of Counsel, Room 116 Education Building, New York State Education Department, Albany, New York 12234.

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II. Follow-up on New Schools

Since time is required for a new school to put into place all aspects of an educational program, it is recommended that a continuing relationship be maintained by public and nonpublic school officials. Also, the superintendent should be assured that pupils are making progress. An objective way to measure progress is through the review of standardized test results. It is recommended that the nonpublic school administrator share such results with the public school superintendent during the first two or three years of the school's existence. It would also be appropriate for the public school superintendent, or a designee, to visit the school annually during this period.

Many new schools add a grade each year as they expand. In such cases, the nonpublic school administrator should furnish the superintendent with information about the instructional program at each additional grade level.

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III. Established Schools

Through experience gained over time, local school officials are usually familiar with nonpublic schools which have been in existence for several years. Schools have a known record through children transferring in and out of the school and their subsequent achievements in public schools and colleges. If, however, a serious concern arises about equivalency of instruction in an established school, the superintendent of schools of the district in which the nonpublic school is located should inform the officials of the nonpublic school that a question has been raised about equivalency of instruction in the school. The superintendent should then discuss the reason for the inquiry informally with the nonpublic school officials.

If, after this discussion, the superintendent of schools concludes that there is a serious problem, the superintendent should discuss it with the District Superintendent, where appropriate, and with the Nonpublic School Services office. If the problem is not resolved at this point, the superintendent should provide to the nonpublic school officials the basis of the question in writing. In addition, the superintendent of schools should, if necessary, ask to visit the nonpublic school at a mutually convenient time in order to check on the information which led to the assertion of lack of equivalency. The superintendent should review materials and data which respond to the assertion and discuss with the officials of the nonpublic school plans for overcoming any deficiency. If the problem can be remedied within a reasonable amount of time, the superintendent and the administrator should agree on a plan and schedule for arriving at a satisfactory solution.

During the period of investigation of equivalency, services to the pupils attending the nonpublic school should continue. Transportation, textbook loans, and health services are to be provided unless and until the board of education of the public school district determines that the program is not equivalent.

If a plan of improvement cannot be designed or if the superintendent judges that the program of instruction continues to be inadequate, the superintendent should notify the board that the nonpublic school program is not equivalent. Subsequent actions are identical to those in the section on new schools.

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IV. Comprehensive Assessment Reports and Equivalency

Nonpublic School Relationship with **State** accountability program - Public school assessment data is disseminated annually through a "public school report card" which is widely disseminated to the tax-paying public that supports public education. For nonpublic schools, this data is contained in a Comprehensive Assessment Report for each participating nonpublic school building. The principals of nonpublic schools are expected to share this information with parents considering a particular school.

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V. Registration of Secondary Schools and Equivalency

The Board of Regents registers nonpublic secondary schools based upon a review of the school program; compliance with applicable laws, rules, and regulations; and achievement of certain standards. There is no registration program for elementary schools. The State Education Department strongly encourages every secondary school to become registered. A nonpublic secondary school may apply for registration by writing to Nonpublic School Services, Room 475 EBA, New York State Education Department, Albany, New York 12234. If a nonpublic school is registered, the Department recommends that the board of education of the district in which the nonpublic school is located accept the registration as evidence the nonpublic high school has an equivalent program of instruction.

A nonpublic secondary school may choose not to be registered. Such a choice does not mean that the school program is inadequate. However, a school which is not registered may not administer Regents examinations or award diplomas. In such a case, the board of education must determine equivalency through local review.

Nonpublic secondary schools registered by the Board of Regents are indicated in the publication, [Directory of Nonpublic Schools and Administrators in New York State](#), which is sent annually to all public school superintendents.

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New York State law requires that the school district, upon request of parents, provide transportation; textbooks; computer software, library materials; dual enrollment programs to pupils attending nonpublic schools; and, upon request of the nonpublic school administrators, health services for pupils at the nonpublic school. The school district must provide services to pupils attending the nonpublic school unless and until such time as the program in the nonpublic school has been determined not to be equivalent to the program offered in the public school.

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Questions and Answers Relating to Determining Equivalency of Instruction in Nonpublic Schools

1. When should the person or group opening a new school inform the public school superintendent that a new school is planned?

This should be done as early as possible in the planning process so the district can plan to provide appropriate services to the children enrolled in the new school.

2. Does the State Education Department require certain building and space standards for nonpublic schools?

No. The State Education Department has no applicable requirements. However, the New York State Uniform Fire Prevention and Building Code does apply to nonpublic schools. Information about the Code may be obtained from:

Division of Housing and Community Development
Building Code Bureau
1 Fordham Plaza
Bronx, NY 10458

3. Are nonpublic schools required to submit fire inspection reports to State or local officials?

Every nonpublic school in the State, except those located in New York City, Buffalo, Rochester, Syracuse and Yonkers, which enrolls more than 6 students in a nursery-kindergarten program or more than 25 students in grades K-12 is required by law to submit a fire inspection report annually to the State Education Department by December 16 of each year. A new school should also give evidence to the public school officials that the school is a safe place for its pupils.

4. If a fire inspection reveals that a nonpublic school building is unsafe, what is the responsibility of the board of education?

The board of education is not responsible for enforcing the provisions of Section 807-a of the Education Law with respect to nonpublic schools. However, in the case of an apparently serious deficiency, the board may take appropriate steps to inform the parents of pupils at the nonpublic school.

5. Must a nonpublic school be in session for 180 days?

No. The 180-day requirement is related to State aid for public schools. The nonpublic school's calendar should approximate that of the public school, but it need not be in session for 180 days.

6. What is the requirement as to the length of a school day in a nonpublic school?

The law does not mandate specific time periods for nonpublic schools but they should provide instruction for approximately the same time required of public schools.

Grades 1-6 = 5 hours daily
Grades 7-12 = 5 1/2 hours daily

7. Must teachers in nonpublic schools be certified?

No. There is no requirement that personnel in nonpublic schools be certified. It is the responsibility of the nonpublic school administrator to hire persons who, in the judgment of the nonpublic school administrator, are qualified in light of the goals and philosophy of the school.

8. What is the responsibility of a nonpublic school with regard to immunization?

Every school is required to abide by the immunization law which requires schools to admit only children

9. **Who has the responsibility for overseeing a nonpublic school's compliance with immunization requirements?**

This is the responsibility of the county health department or local health officials.

10. **What is the responsibility of a nonpublic school for keeping attendance records?**

State law requires the principal of every school to maintain attendance records. Attendance records are legal documents.

11. **Must attendance reports be submitted to State or local authorities?**

Attendance reports need not be submitted to other authorities. However, if a nonpublic school wishes to be reimbursed for recordkeeping, it must submit an AT-6N form to the State Education Department.

12. **Must a nonpublic school use State curriculum materials?**

No. There is no requirement that these be used, although materials are available to nonpublic schools as they are to public schools.

13. **Which tests are nonpublic schools required to administer?**

1996 Regents Policy on Regents Examinations - Nonpublic participation in the 1996 public school standards and assessments initiative is **voluntary**. Minimum high school graduation requirements for registered nonpublic secondary schools in New York State continues to be based on the [CR 100.5](#) diploma requirements effective in September 1985 when the "Regents Action Plan" was implemented. Registered nonpublic secondary schools continue, as of May 2005, to have the option of administering Regents Competency Tests, Regents Examinations, or the alternative examinations described in the appendices of the Spring 1996 edition of the Department publication "Regents Examinations, Regents Competency Tests, & Proficiency Examinations."

Nonpublic School Relationship with current State testing program, Grade 4 and 8 - All public schools are required at grades four and eight to administer various State tests. While not required at the present time, nonpublic elementary schools are strongly encouraged to administer the State tests. Approximately 75% of the children attending nonpublic schools are presently participating.

New State Examinations for Grades 3, 5, 6 & 7 - Discussions are continuing between Department staff and the Commissioner's Advisory Council for Nonpublic Schools regarding nonpublic school participation regarding the new tests, the assignment of identification numbers, the proposed data warehouse, etc. Outstanding issues include how to pay for such participation, the lack of technology in many of the nonpublic schools, etc. Nonpublic participation will not be required. In 2005-2006, nonpublic schools will continue to administer grade 4 + 8 tests (ELA/Math) on a voluntary basis as they have in the past. The State Education Department will continue to act as their "Regional Information Center" (RIC) in regard to scoring said tests. In 2006-2007, nonpublic school participants will administer grade 4,6,and 8 tests on a voluntary basis. It is hoped that SED will continue to act as their RIC. In 2007-2008, nonpublic schools will test in grades 3-8 on a voluntary basis. SED will NOT act as their RIC, but work will be done in the next year or two to align nonpublic schools with RICs housed at various BOCES at affordable costs, or that a "nonpublic RIC" might be developed. Nonpublic schools wishing to administer the grade 3-8 tests now (in line with public schools) are being advised that they must enter into a relationship with a RIC, and that said nonpublic school will be responsible for all related costs.

14. **If a school does not administer the tests noted in question 13, is it providing equivalent instruction?**

The fact that a school does not administer these tests is not evidence of lack of an equivalent program, but it does make it more difficult to judge. If it does not administer State tests, a nonpublic school may not receive reimbursement from the State for this reimbursable service.

15. **Is the superintendent of the public school district entitled to access to the test results of pupils attending a nonpublic school?**

No. But since test results are the most objective way to judge a program, it is recommended that the nonpublic school provide this information to the superintendent upon request.

16. **Must a nonpublic school have a physical education program?**

This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

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Yes. A nonpublic school is required to provide a physical education program which is similar to that offered in the public school for each pupil.

17. Must a nonpublic school have a gymnasium or other physical education facilities?

No. There are no specific facilities required, but a program of instruction must be provided for every pupil.

18. Is a nonpublic school required to have a guidance program?

Commissioner's Regulations require a guidance program in grades 7-12 in nonpublic schools.

19. Which components are required in the guidance program?

Commissioner's Regulations do not specify components. The nature and type of the guidance program is left to the discretion of the nonpublic school.

20. Must a nonpublic school employ a certified guidance counselor?

No.

21. What are the requirements for a library in a nonpublic school?

Every school must establish and maintain a school library which meets the needs of its pupils and provides an adequate complement to the instructional program.

22. What is the responsibility of the board of education for pupils under the age of 6 or over the age of 16?

Since these pupils are not of compulsory attendance age, the board has no responsibility for their attendance upon instruction, except in districts in which the board has the authority to extend the compulsory attendance age to 17 years.

23. At what point is a district obligated to provide services to pupils attending a nonpublic school?

The district must provide services from the beginning of the school year. Services should continue unless and until the board of education determines that the program is not substantially equivalent. Information about these services is available from the Nonpublic School Services office.

24. What subjects must be taught in nonpublic schools?

In grades 1-6 the following subjects must be taught:

- o arithmetic
- o English language
- o reading
- o spelling
- o writing
- o music
- o geography
- o health education
- o physical education
- o science
- o United States history
- o New York State history
- o visual arts

In grades 7 and 8 the following subjects must be taught:

- o English
- o social studies
- o science
- o mathematics
- o physical education
- o health education
- o New York State history
- o visual arts

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- o practical arts
- o technology education
- o home and career skills
- o library and information skills

A high school four-year course of study must include the following units of work or their equivalent:

- o English - 4 units
- o social studies, including a year of American history - 4 units
- o mathematics - 2 units
- o science - 2 units
- o health - 1/2 unit
- o physical education
- o art and/or music - 1 unit

In addition to the preceding, instruction must be provided in:

- o physical education and kindred subjects
- o alcohol, drug, and tobacco abuse
- o highway safety and traffic regulation, bicycle safety
- o school safety patrol
- o fire drills
- o arson and fire prevention

More information on course requirements is found in Part 100 of Commissioner's Regulations.

25. Must the superintendent visit each nonpublic school annually?

No. There is no requirement that the superintendent make annual visits. However, it is recommended that the superintendent visit a new school annually for the first two or three years of its operation. This will enable the superintendent to become acquainted with school officials and knowledgeable about its program.

26. Is a superintendent required to maintain records on nonpublic schools?

While there is no legal requirement to maintain specific records on nonpublic schools, it is helpful for both public and nonpublic school administrators for the superintendent to keep a record of reports, correspondence, and visits related to the determination of equivalency. All official action of a board of education is a matter of record.

27. Does the board of education have the responsibility to see that the nonpublic school files appropriate reports with the State Education Department?

No. The board of education has no responsibility in this matter.

28. If a high school chooses not to be registered, who has the responsibility to notify parents and pupils it enrolls that the school is not registered by the Board of Regents and is not authorized to issue diplomas?

Nonpublic school authorities have a serious responsibility to notify parents of its pupils that the school is not registered by the Board of Regents and is not authorized to issue diplomas.

29. What are the responsibilities of the District Superintendent in relating to a nonpublic school?

As a representative of the State Education Department, the District Superintendent should be of service to school districts and nonpublic schools experiencing difficulty in determining equivalency of instruction or in providing services to pupils attending nonpublic schools. The District Superintendent should help in mediating any difficulties and in providing information to both public and nonpublic school administrators.

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Attachment A: State Education Department Resources

Appeals to the Commissioner:

Office of Counsel

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New York State Education Department
Albany, New York 12234
(518) 474-6400

[Website](#)

Fire Inspection and Transportation:

Educational Facilities Planning
Room 1060 Education Building Annex
New York State Education Department
Albany, New York 12230
(518) 474-3906

[Website](#)

General Nonpublic School Questions, including Pupil Transportation

Office of Nonpublic School Services
Room 475 Education Building Annex
New York State Education Department
Albany, New York 12234
(518) 474-6541

[Website](#)

Health Services:

Office of Student Support Services
Room 318 Education Building
New York State Education Department
Albany, New York 12234
(518) 486-6090

[Website](#)

Home Schooling

Office of Student Support Services
Room 318 Education Building
New York State Education Department
Albany, New York 12234
(518) 474-6090

[Website](#)

High School Registration:

Nonpublic School Services
Room 475 Education Building Annex
New York State Education Department
Albany, New York 12234
(518) 474-3879

[Website](#)

Textbooks:

Educational Finance
Room 507 Education Building
New York State Education Department
Albany, New York 12234
(518) 474-2977

[Website](#)

Testing:

Educational Testing
Room 773 Education Building Annex
New York State Education Department
Albany, New York 12234

NYSCEF DOC. NO. 2
(518) 474-5902
[Website](#)

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Attachment B: Legal References

Academic Records:

Education Law, Section 207
Commissioner's Regulation, Section 104.2

Attendance Records:

Education Law, Section 3211
Commissioner's Regulation, Section 104.1

Compulsory Attendance:

Education Law, Section 3201
Education Law, Section 3204
Education Law, Section 3205
Education Law, Section 3210

Dual Enrollment:

Education Law, Section 3602-c

Fire Inspection and Fire Drills:

Education Law, Section 807
Education Law, Section 807-a

Health and Immunization:

Public Health Law, Section 2164
Education Law, Section 912
Commissioner's Regulation, Section 136.3
Commissioner's Decision #8287, June 1971
Commissioner's Decision #10913, September 1982

Length of School Year and School Day:

Education Law, Section 3604
Commissioner's Regulation, Section 175.5

Registration of Secondary Schools:

Commissioner's Regulation, Section 100.2(p)

Subject of Instruction:

Education Law, Section 803
Education Law, Section 804-806
Education Law, Section 808
Education Law, Section 3204
Commissioner's Regulation, Section 100

Testing:

Commissioner's Regulation, Section 100
Commissioner's Regulation, Section 102

Textbooks:

Education Law, Section 701
Commissioner's Decision 9189, January 1976

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Commissioner's Decision 11,618, April 1986

Transportation:

Education Law, Section 3635

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EXHIBIT B

Substantial Equivalency Review and Determination Process

Education Law §§3204, 3205, and 3210 require the Local School Authority (LSA) to ensure that students of compulsory school age (from six to sixteen or seventeen years of age) who reside within the boundaries of their school district are receiving an education. For children of this age educated in settings other than public schools, local public school officials must ensure that the education received by students is substantially equivalent to that received in district public schools.

The intent of the substantial equivalency determination process is to ensure that all students receive the education to which they are entitled under law. The determination process is a collaborative effort that is intended to be a mutually beneficial learning process for leaders of both public and nonpublic schools. In this context, references to nonpublic school settings refer to private religious or independent schools.¹

For decades, the New York State Education Department (SED or “Department”) has provided guidance for public school officials to determine the substantial equivalence of education provided in religious and independent schools. In response to questions from the field, the Department engaged in a consultative process for approximately two years to update the guidance. This update reflects current law, including the April 2018 amendments to Education Law §3204, and provides guidance and resources to support public school officials and leaders of nonpublic schools in meeting their respective responsibilities related to substantial equivalency requirements.

I. Authority for Substantial Equivalency Determination

A) Local School Authorities (LSA): It is the responsibility of the local school board (or the Chancellor in the case of nonpublic schools located in New York City) as the “school authority” to determine whether a substantially equivalent education is being provided in religious or independent schools.² To support the school board’s determination, the superintendent who serves as the chief executive officer of the district and the educational system³ or a designee (which may include a BOCES, where authorized under §1950 of the Education Law) performs a review.

LSAs are responsible for substantial equivalency determinations, except in the case of:

1. Registered high schools: Registered high schools have been reviewed and visited by SED staff as part of a determination of whether the school may be authorized to administer Regents examinations and confer Regents diplomas. In registering a nonpublic school, the Board of Regents has determined that such school is providing substantially equivalent instruction; such State action divests the LSA of authority to

² see Education Law §§2[12], 3204, 3210

³ see Education Law §§1711[2][b] and [f], 2508[2] and [6]; 2566[2] and [7]

determine substantial equivalence locally.⁴ A directory of nonpublic schools recognized* by the State, with a designation for those with registration status, is available at this site: <http://www.p12.nysed.gov/irs/schoolDirectory/>.

*NOTE: Recognition by the State is a term that means that SED is aware of a school's existence and is receiving annual updates to its enrollment data through the Basic Educational Data System (BEDS). There may be religious and independent schools that do not report this data to the State, as it is not mandatory that they do so. However, since the compulsory education law applies to all school age children, *the requirement that the instruction at a religious or independent school be substantially equivalent is not limited to schools recognized by the State*. LSAs must meet this obligation for all religious and independent schools within their boundaries.

2. Religious and independent schools that meet the statutory criteria described below.

- B) Commissioner of Education: For certain religious and independent schools that meet the statutory criteria described below, the Commissioner of Education must determine whether such nonpublic schools are providing a substantially equivalent education.⁵ The Commissioner will do so after an initial review by local school officials or their designees. Religious and independent schools that believe that they meet the criteria for the Commissioner to make the determination regarding substantial equivalence should inform the LSA representatives of this at the outset of a review. The LSA representative should use the checklist tool provided to confirm and document this eligibility. These materials can be found at the following link: <http://p1232.nysed.gov/nonpub/SubstantialEquivalency.html>

To be eligible for a determination by the Commissioner, nonpublic schools must meet the following criteria:

1. They must be non-profit corporations (defined below);
2. They must have a bilingual program;
3. Elementary and middle schools must have an educational program that extends from no later than nine a.m. until no earlier than four p.m. for grades one through three, and no earlier than five-thirty p.m. for grades four through eight on the majority of weekdays; and
4. Secondary schools must have been established for pupils in high school who have graduated from an elementary school that provides instruction as described in Education Law §3204 and have an educational program that extends from no later than nine a.m. until no earlier than six p.m. on the majority of weekdays.

⁴ Appeal of Fusion Academy-Brooklyn, 56 Ed Dept Rep, Decision No. 17,070

⁵ Education Law §3204[2]

Non-profit corporations:

For purposes of Education Law §3204(2), a non-profit corporation⁶ is:
an independent, not-for-profit school whose corporate purpose includes offering
educational services to students in any grades kindergarten through grade twelve⁷

OR

a not-for-profit religious corporation organized under the Religious Corporations Law
whose corporate purpose includes offering educational services to students in any
grades kindergarten through grade twelve.

II. Review Timeline

Superintendents or their designees will begin to conduct substantial equivalence reviews on behalf of their school boards using the updated process during the 2018-2019 school year. LSA and nonpublic school leaders who will be involved in the review and determination process are expected to attend trainings offered by the Department.

Most superintendents or designees will be able to conduct reviews for their religious and independent schools during the 2018-2019 and 2019-2020 school years, but districts that have large numbers of religious and independent schools within their boundaries may need a longer period of time to complete reviews. All religious and independent schools will be visited as part of the process and initial reviews for all nonpublic schools within a district should be completed by the end of the 2020-2021 school year.

Superintendents or designees should plan to re-visit the religious and independent schools in their district on a five-year cycle. Between visits, school districts and their local religious and independent schools should keep each other informed of important information, such as changes in leadership, curriculum, school building locations, grade levels served, etc. We encourage school leaders to use other opportunities, such as discussions regarding federal Title services, to build a sustained, collaborative working relationship for the benefit of all students.

III. Core Principles

Substantial equivalency reviews and determinations should be conducted in a flexible and inclusive manner and should be the result of a collaboration between the LSA and the

⁶ Section 102(a)(5) and (10) of the Not-for-Profit-Corporation Law (“NPCL”), which is made applicable by Education Law §216-a to non-profit education corporations formed under Education Law §216, generally defines a not-for-profit corporation as being formed exclusively for a purpose(s), not for pecuniary profit or financial gain, for which a corporation may be formed under the NPCL, and no part of the assets, income or profit of which is distributable to, or inures to the benefit of, its members, directors or officers except to the extent permitted by law.

⁷ Authorization to operate as an independent, not-for-profit school may be provided through the issuance of a charter by the Board of Regents (education corporation) or through the Consent of the Commissioner to an amendment to the corporate purposes of an existing corporation, which holds a certificate of incorporation or has been formed under the not-for-profit corporation laws of New York State.

religious or independent school. The following core principles are essential to the review process:

- **Objective:** Reviews and discussions are based on objective criteria, such as school and course schedules, textbooks, and other essential factors. Reviews focus on ensuring that students in the religious or independent school receive substantially equivalent instruction;
- **Mindful:** All school leaders recognize and respect parents' or persons in a parental relationship's legal right to choose among public, religious, and independent school options for their children. Reviews focus on ensuring that students have the opportunity to acquire core skills and to make academic progress, not demonstrating a perfect correspondence between public and nonpublic schools. Nonpublic schools do not need to be equal to their public school counterparts;
- **Sensitive:** LSA representatives understand that religious and independent schools often have different settings, calendars, assessments, and instructional methods from public schools. LSA representatives do not assume that religious and independent schools have the same resources or program as the public district. The LSA should understand that, in some cases, traditions and beliefs – religious or otherwise – will drive the curriculum and will be integrated into the delivery of the learning standards;
- **Respectful:** Public school leaders and religious and independent school leaders are open-minded and respectful of each other's communities, cultures, and needs; and
- **Consistent:** Public school leaders work with their colleagues in other public school districts and BOCES to develop consistent approaches to review and determination across local school districts. This will enable superintendents to be assured that resident students attending nonpublic schools in other districts are receiving a substantially equivalent education.

IV. Review Resources

The Department will be providing a toolkit as well as trainings to assist both the LSA and religious and independent school officials to support and promote consistency in the determination process. The toolkit reflects the recent amendments to §3204 of the Education Law. (See: <http://p1232.nysed.gov/nonpub/SubstantialEquivalency.html>)

The toolkit includes a rubric with criteria aligned with current law and regulation and will be accessible on the Department's website. The toolkit establishes the expectations for both LSA and religious and independent school leaders and supports preparation for and implementation of the review process by all parties. The Department will also develop and maintain a list of frequently asked questions to help leaders in both sectors better understand and improve the determination process.

If the religious or independent school has been accredited (e.g., Middle States) within the last five years, the LSA representatives should take the accreditation materials into account as part of the review process.

V. Review Requirements for Commissioner's Determination:

Education Law §3204(2)(ii) and (iii) include specific requirements regarding the reviews of schools that meet the criteria for Commissioner's Determination.

Grades 1-3 and 4-8: For schools that meet the criteria for Commissioner's Review and teach grades one through three or grades four through eight, the determination by the Department shall include, but not be limited to, a consideration of whether:

- The curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, taking into account the entirety of the curriculum over the course of elementary and middle school;
- Instruction in English enables students to read fiction and nonfiction text for information and to use that information to construct written essays that state a point of view or support an argument;
- Instruction in mathematics prepares students to solve real-world problems using both number sense and fluency with mathematical functions and operations;
- Instruction in history enables students to interpret and analyze primary texts, to identify and explore important events in history, to construct written arguments using the supporting information from primary source material, and to demonstrate an understanding of the role of geography and economics in the actions of world civilizations;
- Students gain an understanding of civics and the responsibilities of citizens in world communities; and
- Instruction in science teaches students to gather, analyze, and interpret observable data to make informed decisions and solve problems mathematically, use deductive and inductive reasoning to support a hypothesis, and how to differentiate between correlational and causal relationships.

Nonpublic High Schools: For schools that meet the criteria for Commissioner's Determination and provide secondary education, the Department's consideration shall include, but not be limited to, whether the full curriculum, as outlined in statute, provides academically rigorous instruction that develops critical thinking skills in the school's students, the outcomes of which, taking into account the entirety of the curriculum result in a sound basic education.

VI. Completing the Review – Local School Authority Determination

A) *The religious or independent school appears to be substantially equivalent*

1. The superintendent or designee will inform the board of education in writing, which will vote and make the final determination in a regularly scheduled, public board meeting;

2. The LSA will send written notification to the administration of the nonpublic school and the LSA will provide a letter for the nonpublic school to distribute to the families of children in attendance;
3. The LSA will notify the State Office of Religious and Independent Schools (SORIS) by emailing SEReviews@nysed.gov; and
4. The superintendent or designee will share the finding with other the superintendents of school districts in which the students of the religious or independent school reside.

B) *The religious or independent school does not appear to be substantially equivalent.*

If local school officials have concerns about the substantial equivalence of the instruction provided by the religious or independent school, they will:

1. Inform the administration of the nonpublic school;
2. Provide written notification to the State Office of Religious and Independent Schools (SORIS) at SEReviews@nysed.gov, and follow the steps described below:
 - a. The LSA and religious or independent school should work collaboratively to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified in the LSA review. SORIS staff may be of assistance in this process.
 - b. The LSA should provide appropriate technical assistance, particularly regarding the availability of any resources for professional development that may support the religious or independent school as it meets the shared goal of substantial equivalence.
 - c. During the period covered by the collaboratively developed timeline, all services that the LSA is required to provide to religious and independent schools and students (e.g., textbooks, special education, transportation, etc.) must be continued.
 - d. If the concerns identified in the LSA review and preliminary determination are addressed appropriately, the LSA will go through the same notification process described in (A) above for a determination of substantial equivalency.
3. If the concerns cannot be remedied or if the religious or independent school does not make the changes necessary to achieve substantial equivalence, the LSA will:
 - a. Notify the board of education, which will vote and make the final determination in a regularly scheduled, public board meeting, as described below.
 - b. Notify the administration of the religious or independent school of the date on which the board of education will consider the matter of substantial equivalency.
 - c. Notify the State Office of Religious and Independent Schools in writing (SEReviews@nysed.gov).

Board of education determination

- After careful consideration of the information provided by the religious or independent school during both the initial review and after the collaborative improvement process has occurred, the school board should vote publicly upon its determination.
- If the school board determines that the religious or independent school is providing substantially equivalent instruction, the LSA should go through the process described in (A).
- If the board of education makes a determination that the school does not meet the standard of substantial equivalency, then:
 - ❖ The LSA shall provide written notification to the administration of the nonpublic school and the parents or persons in a parental relationship of students attending the school of such determination and that the students will be considered truant if they continue to attend that school. The board will provide a reasonable timeframe (e.g., 30-45 days) for parents or persons in a parental relationship to identify and enroll their children in a different appropriate educational setting, consistent with Education Law §3204. The State Office of Religious and Independent Schools (SEReviews@nysed.gov) should be notified in writing of such determination.
 - ❖ Services such as textbooks, special education, and transportation must continue until the end of the reasonable timeframe specified above.
 - ❖ Consistent with Commissioner's Regulations 104.2, a nonpublic school that discontinues its operation may transfer pupil academic records to another school or agency upon written notification to the Commissioner and the chief school administrator in the district where the school is located.
 - Such notification shall set forth the name and address of the school or agency to which the records will be transferred and the effective date of such transfer.
 - In the event that pupil academic records are not transferred to another school or agency, the nonpublic school that has discontinued its operation shall transfer such records to the district of location, and the chief school administrator of such district shall be responsible for permanently maintaining such records in the same manner as they would the records of students who attend the district's public schools. The intended purpose is to protect the privacy of affected students' records as well as those students' ability to access those records as necessary.

VII. Completing the Review – Commissioner's Determination

- The LSA conducts the review using the appropriate toolkit and arrives at a recommendation to be made to the Commissioner.

- The LSA forwards its recommendation and all materials used for the review to the Commissioner at SEReviews@nysed.gov. The LSA will retain a complete and accurate copy of its recommendation and related materials it submits to the Commissioner.
- The Commissioner reviews the materials submitted and may request additional information from the religious or independent school.

A) *The religious or independent school is found to be substantially equivalent.*

The Commissioner notifies the LSA and the administration of the nonpublic school of the determination.

B) *The religious or independent school does not appear to be substantially equivalent.*

If the Commissioner has concerns about the substantial equivalence of the instruction provided by the religious or independent school, then:

1. The Commissioner will notify the LSA and the administration of the nonpublic school of the preliminary determination, including the concerns identified that led to such determination.
2. The Commissioner will direct the LSA to work collaboratively with the nonpublic school to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified in the LSA review. SORIS staff may be of assistance in this process.
3. The Commissioner will also direct the LSA to submit such plan and timeline for the Commissioner's approval.
4. The Commissioner will review and approve the plan and timeline.
5. During the period covered by the collaboratively developed plan and timeline, all services that the LSA is required to provide to religious and independent schools and students (e.g., textbooks, special education, transportation, etc.) must be continued.

Resolution after the Commissioner makes a preliminary determination that a school does not appear to be substantially equivalent:

- If the LSA determines that the concerns identified in the Commissioner's preliminary determination have been addressed appropriately:
 - ❖ The LSA makes a recommendation to the Commissioner and provides supporting documentation.
 - ❖ The Commissioner will review the materials submitted and may request additional information from the religious or independent school prior to making a determination.
- If the concerns cannot be remedied or if the religious or independent school does not make the changes necessary to achieve substantial equivalence:
 - ❖ The LSA will notify the Commissioner.

- ❖ The Commissioner will review the materials submitted. The Commissioner may request additional information from the religious or independent school prior to making a determination, and the Commissioner or a designee may meet with the nonpublic school.

Commissioner's Determination

1. If the Commissioner determines that the religious or independent school is substantially equivalent based on the process described above, the LSA and nonpublic school leaders will be notified.
2. If the Commissioner makes a determination that the school does not meet the standard of substantial equivalency, then:
 - a. The Commissioner will provide a letter to the administration of the nonpublic school and the parents or persons in a parental relationship of students attending the school of such determination. The Commissioner will provide a reasonable timeframe (e.g., 30-45 days) for parents or persons in a parental relationship to identify and enroll their children in a different, appropriate educational setting, consistent with Education Law §3204. Should the parents or persons in parental relationship to the students fail to comply with the Commissioner's directive to enroll in a different, appropriate educational setting, the students will be considered truant.
 - b. Services such as textbooks, special education, and transportation must continue until the end of the reasonable timeframe specified above.
 - c. Consistent with Commissioner's Regulations 104.2, a nonpublic school that discontinues its operation may transfer pupil academic records to another school or agency upon written notification to the Commissioner and the chief school administrator in the district where the school is located.
 - d. Such notification shall set forth the name and address of the school or agency to which the records will be transferred and the effective date of such transfer.
 - e. In the event that pupil academic records are not transferred to another school or agency, the nonpublic school that has discontinued its operation shall transfer such records to the district of location, and the chief school administrator of such district shall be responsible for permanently maintaining such records in the same manner as they would the records of students who attend the district's public schools. This will protect the privacy of affected students' records, as well as those students' ability to access those records as necessary.

Appendix A: Responsibilities and Rights

The responsibilities and rights of the parties involved in and affected by substantial equivalency determinations – some of which are described in the preceding guidance – are summarized below for easy reference:

Responsibilities/Rights of Parents or Persons in a Parental Relationship:

- If parents or persons in a parental relationship disagree with the determination of the board of education, they may file an appeal to the Commissioner within 30 days of the board's decision. Information on the appeals process may be obtained from the New York State Education Department's Office of Counsel website at: <http://www.counsel.nysed.gov/appeals>.
- If parents or persons in a parental relationship are notified that the nonpublic school their children are attending is not substantially equivalent, they must transfer their children to another appropriate educational setting (Education Law §§3204, 3205, 3210).

Responsibilities of the Local School Authority and Superintendent/Designee:

- When contacted by leader of a new nonpublic school in the school district, meet with the nonpublic school leader to build a productive working relationship and develop a timeline for review of substantial equivalency. To the extent possible, such review should begin prior to the opening of school and should be completed as soon as possible thereafter.
- Create a schedule for a cycle of regular substantial equivalency reviews and updates for the religious and independent schools within their boundaries. These should meet the core principles of objectivity, mindfulness, sensitivity, respect, and consistency described above.
- Report that a review has been conducted as well as the outcome of the review through the SED monitoring link in the business portal or via email to the State Office of Religious and Independent Schools (SEReviews@nysed.gov).
- Document and retain a finding of substantial equivalence and provide written confirmation to the religious or independent school.
- If a question or concern arises about the substantial equivalency of instruction in an established school, inform the nonpublic school, provide the nonpublic school the basis of the question or concern in writing, and contact the State Office of Religious and Independent Schools (SEReviews@nysed.gov).

Responsibilities/Rights of Religious and Independent School Leaders:

- When planning and opening a new school, provide written notification to the LSA in which the nonpublic school will be located.
- Communicate with the LSA upon establishment of a nonpublic school or as soon as possible if not done previously.
- Maintain a complete and accurate archive copy that includes detailed records of substantial equivalency determinations.

- Communicate any relevant changes in their instructional programming or other aspects that may have a bearing on substantial equivalence to the LSA superintendent or nonpublic school liaison (e.g., changes in leadership, curriculum, school building locations, grade levels served, etc.)
- Prepare, compile, and provide for review documentation needed for substantial equivalency determinations. The toolkit that will be made available on the SORIS website includes resources that are recommended for this purpose.
- Persons considering themselves aggrieved may file an appeal to the Commissioner within 30 days of the board's decision.

EXHIBIT C

Substantial Equivalency in Religious and Independent Schools

Responsibilities of
Local School Authorities and
Religious and Independent
School Leaders

Statute

Section 3204 of New York State Education Law requires local school officials to ensure that school-aged children who reside within the boundaries of their school district are receiving an education.

Updated Guidance

- For decades, the State Education Department's website has provided guidance for public school officials to determine the substantial equivalence of education in nonpublic schools.
- In response to questions from the field, SED undertook a consultative process to update the guidance.
 - Reflects current law, including the April 2018 amendments to Education Law Section 3204
 - Toolkits for public and nonpublic school leaders

Stakeholder Engagement

- Deliberative and thoughtful process over two years
- Consulted with numerous stakeholders, in both public and nonpublic school communities
- Used feedback from those meetings to enhance the guidance document and resources

What is substantial equivalency?

- Substantial equivalency means that a program is comparable in content and educational experience, but it may differ in method of delivery and format. Substantially equivalent does not mean equal to or identical to.
- The State Education Department provides review criteria aligned with current statute and regulation to be considered as part of the review.

What is the intent of the review process?

- To ensure that all students receive the education to which they are entitled under law
- This process should be used as an opportunity to build strong relationships between public and nonpublic schools within a school district.



Timeline

Core Principles

Objective

Mindful

Sensitive

Respectful

Consistent

Local School Authorities (LSAs)

Local school boards (or the Chancellor in the case of nonpublic schools located in New York City) generally determine whether a substantially equivalent education is being provided. The school board determination will be informed by a review conducted by the superintendent or a designee.

Superintendents may seek assistance from professionals experienced in curriculum and instruction review, such as:

- BOCES
- School principals
- Curriculum experts
- Nonpublic school representatives

Reviews and Determinations

Local school authorities

- **Reviews for all nonpublic schools**, except high schools registered with the Board of Regents, including those that meet statutory criteria established in Section 3204(2) of Education Law
- **Determinations for nonpublic schools except** schools that **meet statutory criteria** established in Section 3204(2) of Education Law

Commissioner of Education

- **Determinations for nonpublic schools that meet statutory criteria** established in Section 3204 and high schools registered with the Board of Regents

Commissioner's Determination of Substantial Equivalence

In April 2018, Section 3204(2) of Education Law was amended.

- For nonpublic elementary and secondary schools that meet the certain criteria described, the Commissioner of Education shall be the entity that **determines** whether the nonpublic elementary, middle, and secondary schools are substantially equivalent.
- The local school authority will use review criteria to make a recommendation to the Commissioner of Education.
- The Commissioner of Education makes the final determination.

Toolkits

Local School Authority Review Tools
 Nonpublic School Self-Study Tools
 Commissioner's Determination of Substantial Equivalence Tools

Local School Authority Review

Who makes the substantial equivalence determination for this nonpublic school?

If the answer to **all** of the applicable questions below is "Yes," the Commissioner will make the determination as to whether the nonpublic school is offering substantially equivalent instruction. If the answer to one or more of the applicable questions below is "No," the local school authority (LSA) will make that determination.

Question	Y/N	Notes
Is the school a non-profit corporation*?	<input type="checkbox"/> Y <input type="checkbox"/> N	
Does the school have a bilingual program?	<input type="checkbox"/> Y <input type="checkbox"/> N	
If the school is an elementary or middle school, does it have an educational program that operates within the following hours on the majority of weekdays? Grades 1-3: no later than 9 a.m. until no earlier than 4 p.m. Grades 4-8: no later than 9 a.m. until no earlier than 5:30 p.m.	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If the school is a high school, does it have an educational program that extends from no later than 9 a.m. until no earlier than 6 p.m. on the majority of weekdays?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If the school is a high school, is it established for students in high school who have graduated from an elementary school that provides instruction as described in Ed. Law §3204?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	

*see page 2 for definition

Which toolkit should my LSA use?



Local School Authority Review Tools

The following tables provide information about items that will be reviewed by the LSA for substantial equivalency. The religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to the nonpublic school.** Other items may be used to demonstrate that the school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If the religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review the accreditation materials as part of the evaluation process.

Accreditation Information	
Is the nonpublic school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information

Documents from the nonpublic school	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.
List of grade levels and the total enrollment at each grade level. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	A copy of the nonpublic school's current BEDS report may be provided.
Academic calendar for the current year Ed. Law §3204, 3210	<input type="checkbox"/> Y <input type="checkbox"/> N	Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.
Daily record of attendance for children in grade levels operated by the nonpublic school 8 NYCRR §104.1	<input type="checkbox"/> Y <input type="checkbox"/> N	Review a sampling of attendance records and the school's comprehensive attendance policy.

Resources on [NYSED.gov](https://www.nysed.gov)

- Updated Guidance
- Public School Toolkit
- Nonpublic School Toolkit
- Commissioner Determination Review Toolkits

- Coming Soon:
 - FAQs
 - Training Dates

EXHIBIT D

Local School Authority Review

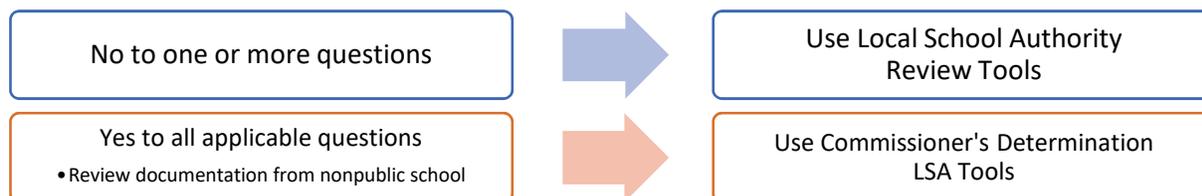
Who makes the substantial equivalence determination for this nonpublic school?

If the answer to **all** of the applicable questions below is “Yes,” the Commissioner will make the determination as to whether the nonpublic school is offering substantially equivalent instruction. If the answer to one or more of the applicable questions below is “No,” the local school authority (LSA) will make that determination.

Question	Y/N	Notes
Is the school a non-profit corporation*?	<input type="checkbox"/> Y <input type="checkbox"/> N	
Does the school have a bilingual program?	<input type="checkbox"/> Y <input type="checkbox"/> N	
If the school is an elementary or middle school, does it have an educational program that operates within the following hours on the majority of weekdays? Grades 1-3: no later than 9 a.m. until no earlier than 4 p.m. Grades 4-8: no later than 9 a.m. until no earlier than 5:30 p.m.	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If the school is a high school, does it have an educational program that extends from no later than 9 a.m. until no earlier than 6 p.m. on the majority of weekdays?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If the school is a high school, is it established for students in high school who have graduated from an elementary school that provides instruction as described in Ed. Law §3204?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	

*see page 2 for definition

Which toolkit should my LSA use?



What if the school is registered with the State Education Department?

If the religious or independent high school is voluntarily registered with the State Education Department, it has been reviewed and visited by NYSED staff and the Board of Regents has determined that it is providing substantially equivalent instruction. Such State action divests the local school authority to determine substantial equivalence locally and you need not proceed with the self-study toolkit or review process (Appeal of Fusion Academy, 56 Ed Dept Rep, Decision No. 17,070).

Nonpublic Secondary School Registration Information	
Is the nonpublic high school registered?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, what was the registration date?	

Definition

Non-profit corporation:

For purposes of Education Law §3204(2), a non-profit corporation¹ is:

an independent, not-for-profit school whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve²

OR

a not-for-profit religious corporation organized under the Religious Corporations Law whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve.

¹ Section 102(a)(5) and (10) of the Not-for-Profit-Corporation Law ("NPCL"), which is made applicable by Education Law §216-a to nonprofit education corporations formed under Education Law §216, generally defines a not-for-profit corporation as being formed exclusively for a purpose(s), not for pecuniary profit or financial gain, for which a corporation may be formed under the NPCL, and no part of the assets, income or profit of which is distributable to, or inures to the benefit of, its members, directors or officers except to the extent permitted by law.

² Authorization to operate as an independent, not-for-profit school may be provided through the issuance of a charter by the Board of Regents (education corporation) or through the Consent of the Commissioner to an amendment to the corporate purposes of an existing corporation, which holds a certificate of incorporation or has been formed under the not-for-profit corporation laws of New York State.

Local School Authority Review Tools

Substantial Equivalency in Religious and Independent Schools

What is substantial equivalency?

Substantial equivalency means that a program is comparable in content and educational experience, but it may differ in method of delivery and format. **Substantially equivalent does not mean equal to.** When determining the substantial equivalency of religious and independent schools, local school authorities are not looking for the same curricula, assessments, and instructional approaches that are used in the public schools. They are looking to see that children are provided with a substantially equivalent educational program.

Parents have a right to have their children attend a nonpublic school under the U.S. Constitution (Pierce v. Society of Sisters, 268 US 510 [1925]). Those charged with determining substantial equivalence must be respectful of this protection, even when the educational philosophy of the nonpublic school does not align with the LSA's program. A school's religious identity may not be a consideration in this review.

What does the substantial equivalence determination involve?

The process for determining substantial equivalence should be a collaborative partnership between the LSA and the nonpublic school and should include multiple steps, including but not limited to the following:

- Meeting(s) between district and nonpublic school leaders
- Review of religious and independent schools' documentation for:
 - Courses and subjects to be taught and corresponding curricula for each grade level in the school
 - Academic calendar and daily schedules
- Collaboration between district and nonpublic school leaders to reach the common goal of substantial equivalency
- Consideration of materials gathered in support of an external accreditation as evidence in the determination, if applicable.

Other items to be considered:

- Processes for ensuring compliance with legal mandates for attendance and immunization records
- Building safety

The tables on the following pages are provided to guide your LSA's substantial equivalence review.

Local School Authority Review Tools

The following tables provide information about items that will be reviewed by the LSA for substantial equivalency. The religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to the nonpublic school.** Other items may be used to demonstrate that the school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If the religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review the accreditation materials as part of the evaluation process.

Accreditation Information	
Is the nonpublic school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information

Documents from the nonpublic school	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.
List of grade levels and the total enrollment at each grade level. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	A copy of the nonpublic school's current BEDS report may be provided.
Academic calendar for the current year <i>Ed. Law §§3204, 3210</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.
Daily record of attendance for children in grade levels operated by the nonpublic school <i>8 NYCRR §104.1</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Review a sampling of attendance records and the school's comprehensive attendance policy.

Statutory and Regulatory Mandates

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
8 NYCRR §§100.2, 100.3, 100.4, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for a detailed list of Program Requirements)	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> • Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> • Framework for instructional programs for limited English proficient students as specified in Ed. Law §3204(2-a) and Part 154 of the Commissioner's regulations • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> • Nonpublic school policy for teacher hiring standards and qualifications • Documentation that instructional staff employed by the school have qualifications consistent with school policy • Nonpublic school policy for teacher/staff evaluation • Nonpublic school policy and schedule for teacher/staff training and professional development • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ³	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(3); 8 NYCRR §100.2(c)(7)	For all students in grades one through eight, instruction in the history of New York State and civics	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

³ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §807; 8 NYCRR 100.2(c)(6)	For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency. (see Appendix B for a detailed list of Fire and Emergency Drill Requirements)	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §808; 8 NYCRR §100.2(c)(6)	In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none"> Guidance program policy and procedures Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §305(52); 8 NYCRR §100.2(c)(11)	Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged children? Notes
<p>Is the building a safe place for children?</p> <p>Are there fire hazards which might endanger students, teachers or employees?⁴</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

⁴ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If an LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Compliance with Health Mandate

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none">• Immunization records• Exemption records• Other:	<input type="checkbox"/> Y <input type="checkbox"/> N

Appendix A: Program Requirements

Learning standards for all grade levels may be referenced at: <http://www.nysed.gov/curriculum-instruction>.

Grades 1-4 (8 NYCRR §§100.2, 100.3, 135.3, 135.4)

During grades one through four, all students shall receive instruction that is designed to facilitate their attainment of the State elementary learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

Grades 5-6 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

During grades five and six, all students shall receive instruction that is designed to facilitate their attainment of the State intermediate learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

¹ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Appendix A: Program Requirements

Grades 7-8 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

The unit of study requirements in the chart below must be met by the end of grade 8 and apply to the two-year span of grades 7 and 8 (unless otherwise noted); they are not annual requirements. For example, one unit of mathematics could be completed in grade 7 and one unit of mathematics could be completed in grade 8. A unit of study means at least 180 minutes of instruction per week throughout the school year or the equivalent (8 NYCRR 100.1[a]).

The unit of study requirements may be met by incorporating, or integrating, the State learning standards into subjects that are not listed below. While doing so, nonpublic schools must meet all unit of study requirements and demonstrate that students are provided with instruction that enables them to achieve the State learning standards.

By the end of grade eight, all students shall be provided instruction designed to enable them to achieve State intermediate learning standards through:	
Mathematics, two units of study	<input type="checkbox"/>
English language arts, two units of study	<input type="checkbox"/>
Social studies, two units of study	<input type="checkbox"/>
Science, two units of study	<input type="checkbox"/>
Career and Technical Education, one and three-fourths unit of study <i>*May be initiated in grade 5</i>	<input type="checkbox"/>
Physical education <i>Ed. Law §803(4); 8 NYCRR §135.4(b)</i>	<input type="checkbox"/>
Health education ² , one half-unit of study <i>Ed. Law §804; 8 NYCRR §135.3</i> <i>*May be provided in grade 6</i>	<input type="checkbox"/>
Visual arts, one half-unit of study	<input type="checkbox"/>
Music, one half-unit of study	<input type="checkbox"/>
Library and information skills, the equivalent of one period per week in grades 7 and 8 <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>
Career development and occupational studies, no unit of study requirement <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>

² Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Appendix A: Program Requirements

Grades 9-12

Please review §§100.2 and 100.5 of the Commissioner's Regulations for instructional and diploma requirements, both local and Regents.

Voluntary Registration of Religious and Independent Secondary Schools

The Board of Regents registers nonpublic secondary schools based upon a review of the school program; compliance with applicable laws, rules, and regulations; and achievement of certain standards. There is no registration process for elementary schools. The State Education Department strongly encourages every secondary school to become registered. A nonpublic secondary school may apply for registration by writing to State Office of Religious and Independent Schools, Room 1078 EBA, New York State Education Department, Albany, New York 12234 or emailing SORIS@nysed.gov.

If a nonpublic school is registered, the Board of Regents has determined that it is providing substantially equivalent instruction and such State action divests the local school district of authority to determine substantial equivalence locally ([Appeal of Fusion Academy](#), 56 Ed Dept Rep, Decision No. 17,070).

A nonpublic secondary school may choose not to be registered. Such a choice does not mean that the school program is inadequate. However, a school that is not registered may not administer Regents examinations or award diplomas. In such a case, the board of education must determine equivalency through local review.

Appendix B: Fire and Emergency Drills

Education Law §807

Religious or Independent School:

Attach fire and emergency drill documentation for school year(s) to this document.

Requirements	Y/N
Did the school hold at least twelve fire and emergency drills in each school year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills held between September 1 st and December 31 st of each year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills evacuation drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were four of the twelve drills lock-down drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Of eight of the evacuation drills, were four through the use of fire escapes on buildings where fire escapes are provided or through the use of identified secondary means of egress?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were drills conducted at different times of the school day?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were pupils instructed in the procedure to be followed in the event that a fire occurs during the lunch period or assembly? *Such additional instruction may be waived where a drill is held during the regular school lunch period or assembly.	<input type="checkbox"/> Y <input type="checkbox"/> N
For school buildings in which students are provided with sleeping accommodations , were four additional drills held in each school year during the hours after sunset and before sunrise?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least two additional drills held during summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least one of the two additional drills held in the first week of summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A

Definitions (see, e.g., Commissioner's regulation §155.17)

Evacuation means moving students for their protection from a school building to a predetermined location in response to an emergency.

Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

Egress is a place or means of going out.

EXHIBIT E

Nonpublic School Self-Study

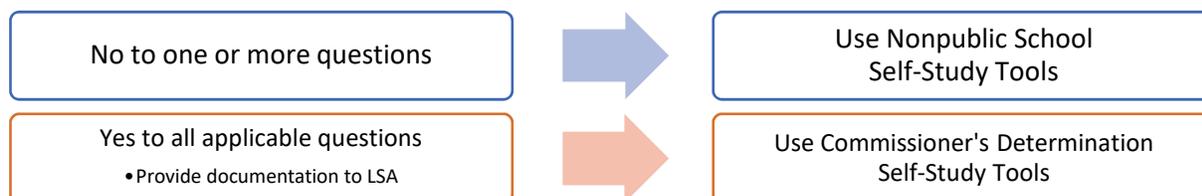
Who makes the substantial equivalence determination for your school?

If the answer to **all** of the applicable questions below is “Yes,” the Commissioner will make the determination as to whether your school is offering substantially equivalent instruction. If the answer to one or more of the applicable questions below is “No,” the local school authority (LSA) will make that determination.

Question	Y/N	Notes
Is your school a non-profit corporation*?	<input type="checkbox"/> Y <input type="checkbox"/> N	
Does your school have a bilingual program?	<input type="checkbox"/> Y <input type="checkbox"/> N	
If your school is an elementary or middle school, does it have an educational program that operates within the following hours on the majority of weekdays? Grades 1-3: no later than 9 a.m. until no earlier than 4 p.m. Grades 4-8: no later than 9 a.m. until no earlier than 5:30 p.m.	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If your school is a high school, does it have an educational program that extends from no later than 9 a.m. until no earlier than 6 p.m. on the majority of weekdays?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	
If your school is a high school, is it established for students in high school who have graduated from an elementary school that provides instruction as described in Ed. Law §3204?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A	

*see page 2 for definitions

Which toolkit should my school use?



What if my school is registered with the State Education Department?

If your religious or independent high school is voluntarily registered with the State Education Department, it has been reviewed and visited by NYSED staff and the Board of Regents has determined that it is providing substantially equivalent instruction. Such State action divests the local school authority to determine substantial equivalence locally and you need not proceed with the self-study toolkit or review process (Appeal of Fusion Academy, 56 Ed Dept Rep, Decision No. 17,070).

Nonpublic Secondary School Registration Information	
Is your high school registered?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, what was the registration date?	

Definition

Non-profit corporation:

For purposes of Education Law §3204(2), a non-profit corporation¹ is:

an independent, not-for-profit school whose corporate purpose includes offering educational services to students in any grade kindergarten through grade twelve²

OR

a not-for-profit religious corporation organized under the Religious Corporations Law whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve.

¹ Section 102(a)(5) and (10) of the Not-for-Profit-Corporation Law ("NPCL"), which is made applicable by Education Law §216-a to nonprofit education corporations formed under Education Law §216, generally defines a not-for-profit corporation as being formed exclusively for a purpose(s), not for pecuniary profit or financial gain, for which a corporation may be formed under the NPCL, and no part of the assets, income or profit of which is distributable to, or insures to the benefit of, its members, directors or officers except to the extent permitted by law.

² Authorization to operate as an independent, not-for-profit school may be provided through the issuance of a charter by the Board of Regents (education corporation) or through the Consent of the Commissioner to an amendment to the corporate purposes of an existing corporation, which holds a certificate of incorporation or has been formed under the not-for-profit corporation laws of New York State.

Nonpublic School Self-Study Tools

Substantial Equivalency in Religious and Independent Schools

What is substantial equivalency?

Substantial equivalency means that a program is comparable in content and educational experience, but it may differ in method of delivery and format. **Substantially equivalent does not mean equal to.** When determining the substantial equivalency of religious and independent schools, local school authorities are not looking for the same curricula, assessments, and instructional approaches that are used in the public schools. They are looking to see that children are provided with a substantially equivalent educational program.

Parents have a right to have their children attend a nonpublic school under the U.S. Constitution (Pierce v. Society of Sisters, 268 US 510 [1925]). Those charged with determining substantial equivalence must be respectful of this protection, even when the educational philosophy of the nonpublic school does not align with the LSA's program. A school's religious identity may not be a consideration in this review.

What does the substantial equivalence determination involve?

The process for determining substantial equivalence should be a collaborative partnership between the LSA and the nonpublic school and should include multiple steps, including but not limited to the following:

- Meeting(s) between district and nonpublic school leaders
- Review of religious and independent schools' documentation for:
 - Courses and subjects to be taught and corresponding curricula for each grade level in the school
 - Academic calendar and daily schedules
- Collaboration between district and nonpublic school leaders to reach the common goal of substantial equivalency
- Consideration of materials gathered in support of an external accreditation as evidence in the determination, if applicable

Other items to be considered:

- Processes for ensuring compliance with legal mandates for attendance and immunization records
- Building safety

The tables on the following pages are provided to help your school prepare for the upcoming review. The completed tables can be shared with the LSA representative, in which case this section should be completed with your school's contact information.

Religious or Independent School:	
School Address:	
School Contact:	
Title:	
Phone # and Email:	

Nonpublic School Self-Study Tools

The following tables provide information about items that will be reviewed by the LSA for substantial equivalency. Your religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to your school.** Other items may be used to demonstrate that your school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If your religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review your accreditation materials as part of the evaluation process.

Accreditation Information	
Is your school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information

Documents to provide to LSA	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.
List of grade levels and the total enrollment at each grade level. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	A copy of the nonpublic school's current BEDS report may be provided.
Academic calendar for the current year <i>Ed. Law §§3204, 3210</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Indicate the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.
Daily record of attendance for children in grade levels operated by the nonpublic school <i>8 NYCRR §104.1</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Provide a sampling of attendance records and the school's comprehensive attendance policy.

Statutory and Regulatory Mandates

Law/Regulation	Requirement	Possible Evidence (This is not an exhaustive list; not all examples must be provided and additional evidence not listed may be considered)	Is the requirement met? Notes
8 NYCRR §§100.2, 100.3, 100.4, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for a detailed list of Program Requirements)	<ul style="list-style-type: none"> Description of curriculum Representative samples of daily, weekly, monthly, yearly schedules Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies Sample lesson plans List of textbooks or other instructional resources Textbook/resource use demonstrated in curriculum and lesson plans Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence (This is not an exhaustive list; not all examples must be provided and additional evidence not listed may be considered)	Is the requirement met? Notes
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> • Nonpublic school policy for teacher hiring standards and qualifications • Documentation that instructional staff employed by the school have qualifications consistent with school policy • Nonpublic school policy for teacher/staff evaluation • Nonpublic school policy and schedule for teacher/staff training and professional development • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship, and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence (This is not an exhaustive list; not all examples must be provided and additional evidence not listed may be considered)	Is the requirement met? Notes
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ³	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(3); 8 NYCRR §100.2(c)(7)	For all students in grades one through eight, instruction in the history of New York State and civics	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

³ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence (This is not an exhaustive list; not all examples must be provided and additional evidence not listed may be considered)	Is the requirement met? Notes
Ed. Law §807; 8 NYCRR 100.2(c)(6)	For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency. (see Appendix B for a detailed list of Fire and Emergency Drill Requirements)	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §808; 8 NYCRR §100.2(c)(6) Law §808	In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none"> Guidance program policy and procedures Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence (This is not an exhaustive list; not all examples must be provided and additional evidence not listed may be considered)	Is the requirement met? Notes
Ed. Law §305(52); 8 NYCRR §100.2(c)(11)	Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged students? Notes
<p>Is the building a safe place for children?</p> <p>Are there fire hazards which might endanger students, teachers or employees?⁴</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

Compliance with Health Mandate

⁴ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If a LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none"> • Immunization records • Exemption records • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Updated 12/21/18

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This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

Appendix A: Program Requirements

Learning standards for all grade levels may be referenced at: <http://www.nysed.gov/curriculum-instruction>.

Grades 1-4 (8 NYCRR §§100.2, 100.3, 135.3, 135.4)

During grades one through four, all students shall receive instruction that is designed to facilitate their attainment of the State elementary learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

Grades 5-6 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

During grades five and six, all students shall receive instruction that is designed to facilitate their attainment of the State intermediate learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

¹ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

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The unit of study requirements in the chart below must be met by the end of grade 8 and apply to the two-year span of grades 7 and 8 (unless otherwise noted); they are not annual requirements. For example, one unit of mathematics could be completed in grade 7 and one unit of mathematics could be completed in grade 8. A unit of study means at least 180 minutes of instruction per week throughout the school year or the equivalent (8 NYCRR 100.1[a]).

The unit of study requirements may be met by incorporating, or integrating, the State learning standards into subjects that are not listed below. While doing so, nonpublic schools must meet all unit of study requirements and demonstrate that students are provided with instruction that enables them to achieve the State learning standards.

By the end of grade eight, all students shall be provided instruction designed to enable them to achieve State intermediate learning standards through:	
Mathematics, two units of study	<input type="checkbox"/>
English language arts, two units of study	<input type="checkbox"/>
Social studies, two units of study	<input type="checkbox"/>
Science, two units of study	<input type="checkbox"/>
Career and Technical Education, one and three-fourths unit of study <i>*May be initiated in grade 5</i>	<input type="checkbox"/>
Physical education <i>Ed. Law §803(4); 8 NYCRR §135.4(b)</i>	<input type="checkbox"/>
Health education ² , one half-unit of study <i>Ed. Law §804; 8 NYCRR §135.3</i> <i>*May be provided in grade 6</i>	<input type="checkbox"/>
Visual arts, one half-unit of study	<input type="checkbox"/>
Music, one half-unit of study	<input type="checkbox"/>
Library and information skills, the equivalent of one period per week in grades 7 and 8 <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>
Career development and occupational studies, no unit of study requirement <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>

² Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Appendix A: Program Requirements

Grades 9-12

Please review §§100.2 and 100.5 of the Commissioner's Regulations for instructional and diploma requirements, both local and Regents.

Voluntary Registration of Religious and Independent Secondary Schools

The Board of Regents registers nonpublic secondary schools based upon a review of the school program; compliance with applicable laws, rules, and regulations; and achievement of certain standards. There is no registration process for elementary schools. The State Education Department strongly encourages every secondary school to become registered. A nonpublic secondary school may apply for registration by writing to State Office of Religious and Independent Schools, Room 1078 EBA, New York State Education Department, Albany, New York 12234 or emailing SORIS@nysed.gov.

If a nonpublic school is registered, the Board of Regents has determined that it is providing substantially equivalent instruction and such State action divests the local school district of authority to determine substantial equivalence locally ([Appeal of Fusion Academy](#), 56 Ed Dept Rep, Decision No. 17,070).

A nonpublic secondary school may choose not to be registered. Such a choice does not mean that the school program is inadequate. However, a school that is not registered may not administer Regents examinations or award diplomas. In such a case, the board of education must determine equivalency through local review.

Appendix B: Fire and Emergency Drills

Education Law §807; 8 NYCRR §125.3

Religious or Independent School:

Attach fire and emergency drill documentation for school year(s) to this document.

Requirements	Y/N
Did the school hold at least twelve fire and emergency drills in each school year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills held between September 1 st and December 31 st of each year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills evacuation drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were four of the twelve drills lock-down drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Of eight of the evacuation drills, were four through the use of fire escapes on buildings where fire escapes are provided or through the use of identified secondary means of egress?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were drills conducted at different times of the school day?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were pupils instructed in the procedure to be followed in the event that a fire occurs during the lunch period or assembly? *Such additional instruction may be waived where a drill is held during the regular school lunch period or assembly.	<input type="checkbox"/> Y <input type="checkbox"/> N
For school buildings in which students are provided with sleeping accommodations , were four additional drills held in each school year during the hours after sunset and before sunrise?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least two additional drills held during summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least one of the two additional drills held in the first week of summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A

Definitions (see, e.g., Commissioner's regulation §155.17)

Evacuation means moving students for their protection from a school building to a predetermined location in response to an emergency.

Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

Egress is a place or means of going out.

EXHIBIT F

Commissioner's Determination of Substantial Equivalence

The following toolkits must be used for nonpublic elementary and middle schools that:

- 1) are non-profit corporations;
- 2) have a bilingual program; and
- 3) have an educational program that extends from:
 - a. no later than 9:00am until no earlier than 4:00pm for grades 1-3 and
 - b. no later than 9:00am until no earlier than 5:30pm for grades 4-8 on the majority of weekdays.

Definitions

Non-profit corporation:

For purposes of Education Law §3204(2), a non-profit corporation¹ is:

an independent, not-for-profit school whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve² OR

a not-for-profit religious corporation organized under the Religious Corporations Law whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve.

Responsibility

The local school authority will use the evaluation criteria to make a recommendation to the Commissioner of Education. The Commissioner shall be the entity that determines whether the nonpublic elementary and middle schools are substantially equivalent.

Enclosed Tools

- Commissioner's Determination Local School Authority (LSA) Tools for Nonpublic Elementary and Middle Schools
- Commissioner's Determination Nonpublic School Self-Study Tools for Elementary and Middle Schools

¹ Section 102(a)(5) and (10) of the Not-for-Profit-Corporation Law ("NPCL"), which is made applicable by Education Law §216-a to nonprofit education corporations formed under Education Law §216, generally defines a not-for-profit corporation as being formed exclusively for a purpose(s), not for pecuniary profit or financial gain, for which a corporation may be formed under the NPCL, and no part of the assets, income or profit of which is distributable to, or inures to the benefit of, its members, directors or officers except to the extent permitted by law.

² Authorization to operate as an independent, not-for-profit school may be provided through the issuance of a charter by the Board of Regents (education corporation) or through the Consent of the Commissioner to an amendment to the corporate purposes of an existing corporation, which holds a certificate of incorporation or has been formed under the not-for-profit corporation laws of New York State.

Commissioner's Determination Local School Authority Tools

The following tables provide information about items that will be reviewed by the LSA to make a recommendation to the Commissioner. The religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to the nonpublic school.** Other items may be used to demonstrate that the school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If the religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review the accreditation materials as part of the evaluation process.

Accreditation Information	
Is the nonpublic school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information for Elementary and Middle Schools

Documents from the nonpublic school	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.
List of grade levels and the total enrollment at each grade level. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	A copy of the nonpublic school's current BEDS report may be provided.
Academic calendar for the current year <i>Ed. Law §§3204, 3210</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.

Documents from the nonpublic school	Y/N	Notes
Daily record of attendance for children in grade levels operated by the nonpublic school 8 NYCRR §104.1	<input type="checkbox"/> Y <input type="checkbox"/> N	Review a sampling of attendance records and the school's comprehensive attendance policy.

Statutory and Regulatory Mandates for Elementary and Middle Schools

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(ii)	<p>For schools that meet the criteria for Commissioner's Determination:</p> <p>The curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, taking into account the entirety of the curriculum over the course of elementary and middle school;</p> <p>Instruction in English will prepare students to read fiction and nonfiction text for information and to use that information to construct written essays that state a point of view or support an argument;</p> <p>Instruction in mathematics will prepare students to solve real-world problems using both number sense and fluency with mathematical functions and operations;</p>	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(ii)	<p>Instruction in history will enable students to interpret and analyze primary text to identify and explore important events in history, to construct written arguments using the supporting information they get from primary source material, and demonstrate an understanding of the role of geography and economics in the actions of world civilizations;</p> <p>Students will gain an understanding of civics and the responsibilities of citizens in world communities; and</p> <p>Instruction in science will teach students to gather, analyze, and interpret observable data to make informed decisions and solve problems mathematically, use deductive and inductive reasoning to support a hypothesis, and how to differentiate between correlational and causal relationships.</p>	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
8 NYCRR §§100.2, 100.3, 100.4, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for a detailed list of Program Requirements)	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> • Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> • Framework for instructional programs for limited English proficient students as specified in Ed. Law §3204(2-a) and Part 154 of the Commissioner's regulations • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> • Nonpublic school policy for teacher hiring standards and qualifications • Documentation that instructional staff employed by the school have qualifications consistent with school policy • Nonpublic school policy for teacher/staff evaluation • Nonpublic school policy and schedule for teacher/staff training and professional development • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ³	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(3); 8 NYCRR §100.2(c)(7)	For all students in grades one through eight, instruction in the history of New York State and civics	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

³ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §807; 8 NYCRR 100.2(c)(6)	<p>For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency.</p> <p>(see Appendix B for a detailed list of Fire and Emergency Drill Requirements)</p>	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §808; 8 NYCRR §100.2(c)(6)	<p>In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency</p>	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none">• Guidance program policy and procedures• Other:	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered for Elementary and Middle Schools

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged children? Notes
<p>Is the building a safe place for children? Are there fire hazards which might endanger students, teachers or employees?⁴</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

⁴ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If an LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Compliance with Health Mandate

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none"> • Immunization records • Exemption records • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Commissioner's Determination Nonpublic School Self-Study Tools

The following tables provide information about items that will be reviewed by the LSA for substantial equivalency. Your religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to your school.** Other items may be used to demonstrate that your school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If your religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review your accreditation materials as part of the evaluation process.

Accreditation Information	
Is your school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information for Elementary and Middle Schools

Documents to provide to LSA	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.
List of grade levels and the total enrollment at each grade level. <i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	A copy of the nonpublic school's current BEDS report may be provided.
Academic calendar for the current year <i>Ed. Law §§3204, 3210</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.

Documents to provide to LSA	Y/N	Notes
Daily record of attendance for children in grade levels operated by the nonpublic school 8 NYCRR §104.1	<input type="checkbox"/> Y <input type="checkbox"/> N	Review a sampling of attendance records and the school's comprehensive attendance policy.

Statutory and Regulatory Mandates for Elementary and Middle Schools

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(ii)	<p>For schools that meet the criteria for Commissioner's Determination:</p> <p>The curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, taking into account the entirety of the curriculum over the course of elementary and middle school;</p> <p>Instruction in English will prepare students to read fiction and nonfiction text for information and to use that information to construct written essays that state a point of view or support an argument;</p> <p>Instruction in mathematics will prepare students to solve real-world problems using both number sense and fluency with mathematical functions and operations;</p>	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(ii)	<p>Instruction in history will enable students to interpret and analyze primary text to identify and explore important events in history, to construct written arguments using the supporting information they get from primary source material, and demonstrate an understanding of the role of geography and economics in the actions of world civilizations;</p> <p>Students will gain an understanding of civics and the responsibilities of citizens in world communities; and</p> <p>Instruction in science will teach students to gather, analyze, and interpret observable data to make informed decisions and solve problems mathematically, use deductive and inductive reasoning to support a hypothesis, and how to differentiate between correlational and causal relationships.</p>	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
8 NYCRR §§100.2, 100.3, 100.4, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for a detailed list of Program Requirements)	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> • Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> • <input type="checkbox"/> Framework for instructional programs for limited English proficient students as specified in Ed. Law §3204(2-a) and Part 154 of the Commissioner's regulation • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> • Nonpublic school policy for teacher hiring standards and qualifications • Documentation that instructional staff employed by the school have qualifications consistent with school policy • Nonpublic school policy for teacher/staff evaluation • Nonpublic school policy and schedule for teacher/staff training and professional development • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<p>Evidence of such curricula and framework</p> <input type="checkbox"/> Other:	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ⁵	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(3); 8 NYCRR §100.2(c)(For all students in grades one through eight, instruction in the history of New York State and civics	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

⁵ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §807; 8 NYCRR 100.2(c)(6)	<p>For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency.</p> <p>(see Appendix B for a detailed list of Fire and Emergency Drill Requirements)</p>	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §808; 8 NYCRR §100.2(c)(6)	In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none"> • Guidance program policy and procedures • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered for Elementary and Middle Schools

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged children? Notes
<p>Is the building a safe place for children? Are there fire hazards which might endanger students, teachers or employees?⁶</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

⁶ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If an LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Compliance with Health Mandate

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none">• Immunization records• Exemption records• Other:	<input type="checkbox"/> Y <input type="checkbox"/> N

Appendix A: Program Requirements

Learning standards for all grade levels may be referenced at: <http://www.nysed.gov/curriculum-instruction>.

Grades 1-4 (8 NYCRR §§100.2, 100.3, 135.3, 135.4)

During grades one through four, all students shall receive instruction that is designed to facilitate their attainment of the State elementary learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

Grades 5-6 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

During grades five and six, all students shall receive instruction that is designed to facilitate their attainment of the State intermediate learning standards in:	
Mathematics, Science, and Technology	<input type="checkbox"/>
English language arts, including reading, writing, listening, and speaking aligned to the current New York State learning standards	<input type="checkbox"/>
Social studies, including geography and United States history	<input type="checkbox"/>
The arts, including visual arts, music, dance, theater, and media arts	<input type="checkbox"/>
Career development and occupational studies	<input type="checkbox"/>
Health education ¹ , physical education, and family and consumer sciences <ul style="list-style-type: none"> • Instruction in health education pursuant to Ed. Law §804; 8 NYCRR §135.3 • Instruction in physical education pursuant to Ed. Law §803(4); 8 NYCRR §135.4(b) 	<input type="checkbox"/>

¹ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Appendix A: Program Requirements

Grades 7-8 (8 NYCRR §§100.2, 100.4, 135.3, 135.4)

The unit of study requirements in the chart below must be met by the end of grade 8 and apply to the two-year span of grades 7 and 8 (unless otherwise noted); they are not annual requirements. For example, one unit of mathematics could be completed in grade 7 and one unit of mathematics could be completed in grade 8. A unit of study means at least 180 minutes of instruction per week throughout the school year or the equivalent (8 NYCRR 100.1[a]).

The unit of study requirements may be met by incorporating, or integrating, the State learning standards into subjects that are not listed below. While doing so, nonpublic schools must meet all unit of study requirements and demonstrate that students are provided with instruction that enables them to achieve the State learning standards.

By the end of grade eight, all students shall be provided instruction designed to enable them to achieve State intermediate learning standards through:	
Mathematics, two units of study	<input type="checkbox"/>
English language arts, two units of study	<input type="checkbox"/>
Social studies, two units of study	<input type="checkbox"/>
Science, two units of study	<input type="checkbox"/>
Career and Technical Education, one and three-fourths unit of study <i>*May be initiated in grade 5</i>	<input type="checkbox"/>
Physical education <i>Ed. Law §803(4); 8 NYCRR §135.4(b)</i>	<input type="checkbox"/>
Health education ² , one half-unit of study <i>Ed. Law §804; 8 NYCRR §135.3</i> <i>*May be provided in grade 6</i>	<input type="checkbox"/>
Visual arts, one half-unit of study	<input type="checkbox"/>
Music, one half-unit of study	<input type="checkbox"/>
Library and information skills, the equivalent of one period per week in grades 7 and 8 <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>
Career development and occupational studies, no unit of study requirement <i>*May be incorporated or integrated into any other subjects</i>	<input type="checkbox"/>

² Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Appendix B: Fire and Emergency Drills

Education Law §807;

Religious or Independent School:

Attach fire and emergency drill documentation for school year(s) to this document.

Requirements	Y/N
Did the school hold at least twelve fire and emergency drills in each school year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills held between September 1 st and December 31 st of each year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills evacuation drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were four of the twelve drills lock-down drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Of eight of the evacuation drills, were four through the use of fire escapes on buildings where fire escapes are provided or through the use of identified secondary means of egress?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were drills conducted at different times of the school day?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were pupils instructed in the procedure to be followed in the event that a fire occurs during the lunch period or assembly? *Such additional instruction may be waived where a drill is held during the regular school lunch period or assembly.	<input type="checkbox"/> Y <input type="checkbox"/> N
For school buildings in which students are provided with sleeping accommodations , were four additional drills held in each school year during the hours after sunset and before sunrise?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least two additional drills held during summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least one of the two additional drills held in the first week of summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A

Definitions (see, e.g., *Commissioner's regulation §155.17*)

Evacuation means moving students for their protection from a school building to a predetermined location in response to an emergency.

Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

Egress is a place or means of going out.

EXHIBIT G

Commissioner's Determination of Substantial Equivalence

The following toolkits must be used for nonpublic high schools that:

- 1) are established for pupils in high school who have graduated from an elementary school that qualifies for Commissioner's Determination of substantial equivalence;
- 2) are non-profit corporations;
- 3) have a bilingual program; and
- 4) have an educational program that extends from no later than 9:00am until no earlier than 6:00pm on the majority of weekdays.

Definitions

Non-profit corporation:

For purposes of Education Law §3204(2), a non-profit corporation¹ is:

an independent, not-for-profit school whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve² OR

a not-for-profit religious corporation organized under the Religious Corporations Law whose corporate purpose includes offering educational services to students in any grades kindergarten through grade twelve.

Responsibility

The local school authority will use the evaluation criteria to make a recommendation to the Commissioner of Education. The Commissioner shall be the entity that determines whether the nonpublic elementary and middle schools are substantially equivalent.

If the religious or independent high school is voluntarily registered with the State Education Department, it has been reviewed and visited by NYSED staff and the Board of Regents has determined that it is providing substantially equivalent instruction. Such State action divests the local school authority to determine substantial equivalence locally and you need not proceed with the self-study toolkit or review process ([Appeal of Fusion Academy](#), 56 Ed Dept Rep, Decision No. 17,070).

Nonpublic Secondary School Registration Information	
Is the nonpublic high school registered?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, what was the registration date?	

¹ Section 102(a)(5) and (10) of the Not-for-Profit-Corporation Law ("NPCL"), which is made applicable by Education Law §216-a to nonprofit education corporations formed under Education Law §216, generally defines a not-for-profit corporation as being formed exclusively for a purpose(s), not for pecuniary profit or financial gain, for which a corporation may be formed under the NPCL, and no part of the assets, income or profit of which is distributable to, or inures to the benefit of, its members, directors or officers except to the extent permitted by law.

² Authorization to operate as an independent, not-for-profit school may be provided through the issuance of a charter by the Board of Regents (education corporation) or through the Consent of the Commissioner to an amendment to the corporate purposes of an existing corporation, which holds a certificate of incorporation or has been formed under the not-for-profit corporation laws of New York State.

Enclosed Tools

- Commissioner's Determination Local School Authority (LSA) Tools for Nonpublic High Schools
- Commissioner's Determination Nonpublic School Self-Study Tools for High Schools

Commissioner's Determination Local School Authority Tools

If the religious or independent high school is voluntarily registered with the State Education Department, it has been reviewed and visited by NYSED staff and the Board of Regents has determined that it is providing substantially equivalent instruction. Such State action divests the local school authority to determine substantial equivalence locally and you need not proceed with the review process (Appeal of Fusion Academy, 56 Ed Dept Rep, Decision No. 17,070).

Nonpublic Secondary School Registration Information	
Is the nonpublic high school registered?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, what was the registration date?	

The following tables provide information about items that will be reviewed by the LSA to make a recommendation to the Commissioner. The religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to the nonpublic school.** Other items may be used to demonstrate that the school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If the religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review the accreditation materials as part of the evaluation process.

Accreditation Information	
Is the nonpublic school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information for High Schools

Documents from the nonpublic school	Y/N	Notes
List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i>	<input type="checkbox"/> Y <input type="checkbox"/> N	The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location. A copy of the nonpublic school's current BEDS report may be provided.

Documents from the nonpublic school	Y/N	Notes
<p>List of grade levels and the total enrollment at each grade level.</p> <p><i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>A copy of the nonpublic school's current BEDS report may be provided.</p>
<p>Academic calendar for the current year</p> <p><i>Ed. Law §§3204, 3210</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.</p>
<p>Daily record of attendance for children in grade levels operated by the nonpublic school</p> <p><i>8 NYCRR §104.1</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>Review a sampling of attendance records and the school's comprehensive attendance policy.</p>

Statutory and Regulatory Mandates for High Schools

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(iii)	The curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education.	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §§100.2, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for more information)	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> • Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> • Framework for instructional programs for limited English proficient students as specified in Ed. Law §3204(2-a) and Part 154 of the Commissioner's regulations • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> • Nonpublic school policy for teacher hiring standards and qualifications • Documentation that instructional staff employed by the school have qualifications consistent with school policy • Nonpublic school policy for teacher/staff evaluation • Nonpublic school policy and schedule for teacher/staff training and professional development • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ³	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

³ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §807; 8 NYCRR 100.2(c)(6)	<p>For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency.</p> <p>(see Appendix B for a detailed list of Fire and Emergency Drill Requirements)</p>	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §808; 8 NYCRR §100.2(c)(6)	In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none"> Guidance program policy and procedures Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §305(52); 8 NYCRR §100.2(c)(11)	Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered for High Schools

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged children? Notes
<p>Is the building a safe place for children? Are there fire hazards which might endanger students, teachers or employees?⁴</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

⁴ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If an LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Compliance with Health Mandate

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none">• Immunization records• Exemption records• Other:	<input type="checkbox"/> Y <input type="checkbox"/> N

Commissioner's Determination Nonpublic School Self-Study Tools

If your religious or independent high school is voluntarily registered with the State Education Department, it has been reviewed and visited by NYSED staff and the Board of Regents has determined that it is providing substantially equivalent instruction. Such State action divests the local school authority to determine substantial equivalence locally and you need not proceed with the self-study toolkit or review process (Appeal of Fusion Academy, 56 Ed Dept Rep, Decision No. 17,070).

Nonpublic Secondary School Registration Information	
Is your high school registered?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, what was the registration date?	

The following tables provide information about items that will be reviewed by the LSA for substantial equivalency. Your religious or independent school should collect applicable documentation and evidence to support each item. **Some items will not be applicable to your school.** Other items may be used to demonstrate that your school meets requirements, and evidence may come from a discussion between the public and nonpublic representatives.

If your religious or independent school is accredited (e.g., Middle States), has gone through the accreditation process, and received accreditation in the last 5 years the LSA representatives should review your accreditation materials as part of the evaluation process.

Accreditation Information	
Is your school accredited?	<input type="checkbox"/> Y <input type="checkbox"/> N
If yes, by what accrediting agency?	
If yes, what was the most recent approval date?	

General Information for High Schools

Documents to provide to LSA	Y/N	Notes
<p>List of the number of students, by district of residence, who are attending the nonpublic school. These lists will provide data to the district so that it can arrange to provide the services to which those students are entitled. <i>This data is needed for publicly-funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>The school district in which a student lives is the district of residence. The school district in which a nonpublic school is located is the district of location.</p> <p>A copy of the nonpublic school's current BEDS report may be provided.</p>

Documents to provide to LSA	Y/N	Notes
<p>List of grade levels and the total enrollment at each grade level.</p> <p><i>This data is needed for publicly funded services for pupils attending nonpublic schools. Examples include special education services, transportation, health, and instructional materials aid.</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>A copy of the nonpublic school's current BEDS report may be provided.</p>
<p>Academic calendar for the current year</p> <p><i>Ed. Law §§3204, 3210</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>Review the total number of instructional days in the school year. Instruction must be substantially equivalent in amount and quality, but this does not necessarily mean equal.</p>
<p>Daily record of attendance for children in grade levels operated by the nonpublic school</p> <p><i>8 NYCRR §104.1</i></p>	<input type="checkbox"/> Y <input type="checkbox"/> N	<p>Review a sampling of attendance records and the school's comprehensive attendance policy.</p>

Statutory and Regulatory Mandates for High Schools

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(iii)	The curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education.	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §§100.2, 100.5, 135.3, 135.4	Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner's Regulations (see Appendix A for more information)	<ul style="list-style-type: none"> • Description of curriculum • Representative samples of daily, weekly, monthly, yearly schedules • Framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies • Sample lesson plans • List of textbooks or other instructional resources • Textbook/resource use demonstrated in curriculum and lesson plans • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §3204(2)(i)	English shall be the language of instruction for common branch subjects required by Ed. Law §3204	<ul style="list-style-type: none"> Framework for teaching and learning in the subjects of instruction required by Ed. Law §3204 Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Pupils who have limited English proficiency shall be provided with instructional programs, as specified in Ed. Law §3204(2-a) and 8 NYCRR Part 154, to enable them to develop academically while achieving competence in the English language	<ul style="list-style-type: none"> Framework for instructional programs for limited English proficient students as specified in Ed. Law §3204(2-a) and Part 154 of the Commissioner's regulations Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §3204(2)(i)	Instruction may be given only by a competent teacher	<ul style="list-style-type: none"> Nonpublic school policy for teacher hiring standards and qualifications Documentation that instructional staff employed by the school have qualifications consistent with school policy Nonpublic school policy for teacher/staff evaluation Nonpublic school policy and schedule for teacher/staff training and professional development Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801(1); 8 NYCRR §100.2(c)(1)	For all students over eight years of age, instruction in patriotism and citizenship	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §801(2); 8 NYCRR §100.2(c)(3)	For all students in the eighth and higher grades, instruction in the history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §801-a	The course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §803(4)	For all students over the age of eight, a course of instruction similar to that required in public schools for the development of character, citizenship, physical fitness, and the worthy use of leisure.	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §804 ⁵	For all students, health education regarding mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers	<ul style="list-style-type: none"> • Evidence of such curricula and framework • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

⁵ Ed. Law §3204(5): "Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law."

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §806; 8 NYCRR §100.2(c)(5)	For all students, instruction in highway safety and traffic regulation	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §807; 8 NYCRR 100.2(c)(6)	<p>For all students, instruction in fire and emergency drills. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency.</p> <p>(see Appendix B for a detailed list of Fire and Emergency Drill Requirements)</p>	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that the required types and number of drills are held at the required times (e.g., calendars, schedules) Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Law/Regulation	Requirement	Possible Evidence	Is the requirement met? Notes
Ed. Law §808; 8 NYCRR §100.2(c)(6)	In all schools, instruction in fire and arson prevention, injury prevention and life safety education. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency	<ul style="list-style-type: none"> Evidence of such curricula and framework Evidence that such instruction is provided to all students in every nonpublic school for a period of not less than 45 minutes in each month during which such school is in session. Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
8 NYCRR §100.2(j)	Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12	<ul style="list-style-type: none"> Guidance program policy and procedures Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N
Ed. Law §305(52); 8 NYCRR §100.2(c)(11)	Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator	<ul style="list-style-type: none"> Evidence of such curricula and framework Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Other Items to be Considered for High Schools

Process for Determining Academic Progress

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> List of standardized tests administered in each grade Data on standardized test scores Other assessments used for progress monitoring Representative samples of student report cards Goals for student achievement and educational program Process for administering assessments and analyzing data Graduation rates, if applicable Plan for improving academic outcomes Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Building Safety

Questions	Possible Evidence	Is the building safe for school aged children? Notes
<p>Is the building a safe place for children? Are there fire hazards which might endanger students, teachers or employees?⁶</p>	<ul style="list-style-type: none"> Certificate of Occupancy Fire inspection report Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N Building safety is verified by the local building authority in which the nonpublic school is located.

⁶ **Unsafe Building Policy** (2015 International Property Maintenance Code, §108.1)

An unsafe structure is one that is found to be dangerous to life, health, property, or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the premises or structure. If an LSA official observes that the religious or independent school building is unsafe, he/she must contact the local building authority immediately.

Compliance with Health Mandate

Requirement	Possible Evidence	Is the requirement met? Notes
Enrolled children meet the immunization requirements for their grades <i>Public Health Law §2164; 10 NYCRR §66-1.1</i>	<ul style="list-style-type: none"> • Immunization records • Exemption records • Other: 	<input type="checkbox"/> Y <input type="checkbox"/> N

Appendix A: Program Requirements

Grades 9-12

Please review §§100.2 and 100.5 of the Commissioner's Regulations for instructional and diploma requirements, both local and Regents.

Voluntary Registration of Religious and Independent Secondary Schools

The Board of Regents registers nonpublic secondary schools based upon a review of the school program; compliance with applicable laws, rules, and regulations; and achievement of certain standards. There is no registration process for elementary schools. The State Education Department strongly encourages every secondary school to become registered. A nonpublic secondary school may apply for registration by writing to State Office of Religious and Independent Schools, Room 1078 EBA, New York State Education Department, Albany, New York 12234 or emailing SORIS@nysed.gov.

If a nonpublic school is registered, the Board of Regents has determined that it is providing substantially equivalent instruction and such State action divests the local school district of authority to determine substantial equivalence locally ([Appeal of Fusion Academy](#), 56 Ed Dept Rep, Decision No. 17,070).

A nonpublic secondary school may choose not to be registered. Such a choice does not mean that the school program is inadequate. However, a school that is not registered may not administer Regents examinations or award diplomas. In such a case, the board of education must determine equivalency through local review.

Appendix B: Fire and Emergency Drills

Education Law §807;

Religious or Independent School:

Attach fire and emergency drill documentation for school year(s) to this document.

Requirements	Y/N
Did the school hold at least twelve fire and emergency drills in each school year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills held between September 1 st and December 31 st of each year?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were eight of the twelve drills evacuation drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were four of the twelve drills lock-down drills?	<input type="checkbox"/> Y <input type="checkbox"/> N
Of eight of the evacuation drills, were four through the use of fire escapes on buildings where fire escapes are provided or through the use of identified secondary means of egress?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were drills conducted at different times of the school day?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were pupils instructed in the procedure to be followed in the event that a fire occurs during the lunch period or assembly? *Such additional instruction may be waived where a drill is held during the regular school lunch period or assembly.	<input type="checkbox"/> Y <input type="checkbox"/> N
For school buildings in which students are provided with sleeping accommodations , were four additional drills held in each school year during the hours after sunset and before sunrise?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least two additional drills held during summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
For school buildings where summer school is conducted , were at least one of the two additional drills held in the first week of summer school?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A

Definitions (see, e.g., Commissioner's regulation §155.17)

Evacuation means moving students for their protection from a school building to a predetermined location in response to an emergency.

Lock-down means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. Lock-down will only end upon physical release from the room or secured area by law enforcement.

Egress is a place or means of going out.

EXHIBIT H

Substantial Equivalency Guidance Frequently Asked Questions

General Questions

Why has the State Education Department released updated substantial equivalency guidance?

A: For decades, the Department has provided guidance for public school officials to determine the substantial equivalence of education provided in religious and independent schools. In response to questions from the field, the Department engaged in a consultative process for approximately two years to update the guidance. This update reflects current law, including the April 2018 amendments to Education Law §3204, and provides guidance and resources to support public school officials and leaders of nonpublic schools in meeting their respective responsibilities related to substantial equivalency requirements.

Why does the Department think nonpublic schools need to be reviewed?

A: State law requires that nonpublic schools provide instruction that is at least substantially equivalent to that provided by students' school districts of residence. The intent of the substantial equivalency determination process is to ensure that all students receive the education to which they are entitled under law. The determination process is a collaborative effort that is intended to be a mutually beneficial process for leaders of both public and nonpublic schools.

The guidance references substantially equivalent education for "all" students within the districts. Does this mean that homeschool families would also be evaluated by the district to meet these standards as well?

A: Section 100.10 of the Commissioner's regulations establishes the requirements for home instruction. The substantial equivalency guidance applies only to nonpublic schools and does not apply to home instruction.

Will an updated list of nonpublic schools be available to superintendents? Some of the schools in the directory have recently closed.

A: The State Education Department's Office of Information and Reporting Services posts a [directory of nonpublic schools](#) with BEDS codes once each school year. SED does not maintain a directory of schools without BEDS codes; therefore, no comprehensive list is available. For the most up-to-date nonpublic school records, we recommend searching the [Department's database, SEDREF](#), by using the "School Dist Loc Code" field.

Does the updated substantial equivalency guidance include nonpublic schools whose students reside in our district but attend nonpublic schools outside of our district?

A: Local school authorities (LSAs) are responsible to ensure that students residing within their boundaries receive an education. LSAs are also responsible for substantial equivalence reviews for nonpublic schools within their boundaries. If an LSA conducts a substantial equivalence review for a nonpublic school within its boundaries that is also attended by students who reside in other school districts, the reviewing LSA must share the substantial equivalence determination with each student's district of residence.

Will there be additional funding for this work?

A: No, ensuring compliance with the compulsory education law is a longstanding obligation of school districts under State law. No additional funding will be provided. However, current available funding (e.g., Title funding, textbook loan program) may be used to implement and maintain substantially equivalent instruction.

Can we use AIS funding to meet the requirements of a substantial equivalency review?

A: No. This does not meet the requirements for spending under that program. AIS funding supports academic outcomes. Activities and materials that are eligible for reimbursement are outlined in the [AIS grant guidance](#).

Do federal "Title" services stop during a substantial equivalency review?

A: No. All funding and services, including Title services and transportation, must continue for all nonpublic schools throughout the process. Funding and services would only cease in the event that, upon completion of the process set forth in the guidance, a formal determination is made that the school is not providing substantially equivalent instruction.

What should public schools, nonpublic schools, parents, or other individuals do if they have questions regarding substantial equivalency?

A: Contact the Department's State Office of Religious and Independent Schools through the SEReviews@nysed.gov email address for guidance and technical assistance.

Substantial Equivalency Review Process

My nonpublic school contacted the local school district superintendent, who is ready to proceed with the review. Are there specific forms/documents and timelines that must be followed?

A: LSAs must be trained before conducting substantial equivalency reviews per the new guidance. After training, LSAs and nonpublic school leaders should use the toolkits to prepare for and during the review process. SED will be posting a training schedule on its [substantial equivalency web page](#).

As a nonpublic school leader, I understand that I should reach out to our local school authority personnel to develop a relationship and to start the process. Can

you tell me who that person or persons would be and how they may be contacted?

A: You should contact the school district's superintendent's office to begin the process. The contact information can be found either on the school district's website or in SED's database, [SEDREF](#).

Are there any limits as to what documentation nonpublic schools must provide to LSAs (i.e., can we not provide copies of copyrighted, proprietary documents; is scope and sequence from publisher enough)?

A: Nonpublic schools should make available evidence – that will likely look different in each school – to demonstrate they meet the statutory and regulatory instructional requirements. In the event that such evidence includes copyrighted and/or proprietary materials, nonpublic schools and LSAs should work collaboratively to protect such information while facilitating the review process. For example, such materials may be reviewed by the LSA during an in-person meeting.

Religious Instruction

Is it possible for a religious school to maintain religious studies with the new Substantial Equivalency Guidance?

A: Yes. Nonpublic school leaders have the right to establish their schools' religious instructional programs.

If our school can provide instruction in all the subjects in 2 1/2 hours will that be considered substantially equivalent?

A: The unit of study requirements for grades 7 and 8 total approximately 3.5 hours per day (or approximately 17.5 hours over a five-day school week) of instruction. Please review the [Nonpublic School Self-Study Toolkit's Appendix A: Program Requirements](#).

Program Requirements

Does the new guidance require more instruction in nonpublic schools than in public schools? Will the hour requirements leave any room for religious instruction?

A: The guidance and toolkits incorporate statutory and regulatory instructional requirements that apply to both nonpublic and public schools. In December 2018, the Department clarified the unit of study requirements in Appendix A of the toolkits to make them more understandable. The new information can be found in Appendix A of each toolkit on our [substantial equivalency web page](#). The unit of study requirements for grades 7 and 8 total approximately 3.5 hours per day (or approximately 17.5 hours over a five-day school week) of instruction.

Appendix A states that the unit of study requirements “may be met by the incorporation of the State learning standards of such subjects into the syllabi for other courses. Such integration must be documented in writing and kept on file at the school.” Does this mean that there needs to be a minute-by-minute assessment of whether a “unit of study” has been provided by incorporation into the religious studies curriculum? Or does this permit a qualitative assessment of the skills conveyed through teaching religious studies?

A: Nonpublic schools should have lesson plans and/or curriculum maps that demonstrate the school has met all unit of study requirements and that students are provided with regularly scheduled instruction that enables them to achieve the State learning standards.

To what extent will the local school authority review a nonpublic school’s teachers’ qualifications?

A: Ed. Law §3204(2)(i) requires that instruction at a nonpublic school be provided by a competent teacher. The local school authority reviews whether instruction is given by a competent teacher by assessing evidence such as the nonpublic school’s policy for teacher hiring standards and qualifications; documentation that instructional staff employed by the school have qualifications consistent with the school policy; staff/teacher evaluation policies; and schedule and policy for staff/teacher training and professional development. The law does not require nonpublic school teachers to be certified.

High School Registration

My nonpublic high school is registered by the Board of Regents, and according to the updated substantial equivalency guidance, our high school is not required to be reviewed by the local school authority. However, since becoming registered, the school has expanded and has more than one high school location. Does our high school registration status apply to all our high school locations and, if so, are they exempt from the substantial equivalency review?

A: The high school registration status applies to the location that was visited by NYSED staff during the high school registration process. Additional locations that have not undergone the registration process must be reviewed for substantial equivalency, even if they are affiliated with a registered high school.

For registered high schools: Will registered high schools be required to go through re-registration or revisits on any cycle similar to the substantial equivalence reviews?

A. The Department is in the process of reviewing the regulations and guidance regarding the nonpublic school registration process.

January 9, 2019

Page 4 of 5

If my school has applied for nonpublic high school registration but the registration has not yet been approved, does my school need to go through the substantial equivalency review process?

A: Yes.

If we have a 7-12 school, and the 9-12 high school is registered, can we consider the entire school to be registered (because grades 7 and 8 are associated with a registered high school)?

A. No, high school registration applies to grades 9-12 only. The lower grades must be reviewed.

EXHIBIT I

Search Career Opportunities

Executive Director for Substantial Equivalency, Office of Nonpublic Schools

Tracking Code
13675

Job Description

Position Summary: Under the direction of the Senior Executive Director, Office of Nonpublic Schools, with great latitude for independent action and decision-making, the Executive Director for Substantial Equivalency is responsible for ensuring that the instruction provided to approximately 250,000 students in approximately 800 nonpublic schools is substantially equivalent to that in public schools. In alignment with New York State Education Department (NYSED) regulations, the Executive Director will be responsible for developing a training and oversight model that enables the DOE to observe instructional practices, identify discrepancies, and report data to NYSED. Performs related work.

Reports to: Senior Executive Director, Division of Nonpublic Schools

Direct Reports: Director of Special Projects; Substantial Equivalency Program Specialists; Data Analysts; Principal Administrative Associates

Key Relationships: Deputy Chancellor for School Planning and Development, New York State Education Department, independent and religious school officials, Office of Intergovernmental Affairs, Office of Legal Services, nonpublic school principals, and instructional staff

Responsibilities

- Leads the Department's efforts to determine whether a substantially equivalent education is being provided to approximately 250,000 students in 800 religious or independent schools across New York City.
- Manages a team to conduct school visits, monitors curriculum, and gathers information about education in nonpublic schools to make determinations about equivalency with education in public schools.
- Represents the NYC Department of Education in high-level meetings with the NY State Education Department, City officials, and religious and independent school officials.
- Works closely with local religious and independent schools to communicate and maintain information related to curriculum and instruction, school leadership, building locations, grade levels served, etc.
- Works closely with Nonpublic School principals, teachers, and school staff to ensure minimal disruption to students' instructional day during school visits.
- Develops and implements training on current instructional standards and New York State guidance related to substantial equivalency implementation.
- Serves a Senior Advisor to DOE leadership on policy decisions related to education in nonpublic schools.
- Gathers and tracks pertinent data and reports to NYCDOE leadership and NYSED on a continual basis.

Qualification Requirements:

Minimum

Must currently possess a New York State Certification as a School District Administrator (SDA) or School District Leader (SDL). **Please note: We do not accept internship certificates.**

Preferred

- Possesses a solid understanding of NY State Educational instructional standards and practices.
- Command of rules and regulations governing substantial equivalency determinations.
- Excellent written and oral communication skills.

Salary: \$125,256+

Please be sure application includes a resume, cover letter and your 6-digit NYCDOE file number that was issued.

Applications will be accepted through February 13, 2019 at 3pm.

Please note: The filling of all positions is subject to budget availability and/or grant funding.

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Job Location

New York, New York, United States

Position Type

Full-Time/Regular

New Posting

Yes

Readvertisement

No

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