SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

A.B. and C.D., by their parent and next friend, JANE ROE, E.F. by his parent and next friend, JOHN DOE, and I.J., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

KATHY HOCHUL as Governor of the State of New York, CARL HEASTIE, as Speaker of the New York State Assembly, ANDREA STEWART-COUSINS, as Majority Leader of the New York State Senate and the STATE OF NEW YORK,

Defendants.

Index No.: 532364/2025

ASSIGNED JUDGE:

Hon. Katherine Levine

Proposed Brief of Parents for Educational And Religious Liberty in Schools and Torah Umesorah in Support of Dismissing the Complaint

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TABLE OF CONTENTS

PRELIMINARY STATEMENT

In recent years, the State Education Department (SED) has asserted increased control over the instruction provided at private and parochial schools, and especially over Jewish schools. The Legislature has responded by amending the Education Law to bolster the rights of parents who choose nonpublic schools for their children and the autonomy of the schools that they attend.

The Plaintiffs in this case disagree with the Legislature's choices. They not only ask this Court to declare these amendments "null and void," they also seek a remarkable injunction forcing State officials to "adopt [new] laws, regulations, and policies" that would codify their preferences for what should be taught in Jewish schools. Compl. p.56.

Plaintiffs have no legal basis for these requests. They assert that the amendments are unconstitutionally "vague." In fact, they are quite clear.

They assert that they have been deprived of their right to a "substantially equivalent education" under the Compulsory Education Law. The Jewish schools Plaintiffs attend unquestionably provide "substantially equivalent" instruction under the Education Law. But if they didn't, any remedy lies against parents in individualized Family Court proceedings, not here.

Plaintiffs also assert that they have been deprived of their state constitutional right to a sound basic education. That right cannot be asserted by students attending nonpublic schools. Even if it could, the Complaint does not allege the district-wide deficiencies in educational outcomes required to bring such a claim. It could not because the State's published data shows that Jewish schools rank among the highest performing schools in New York.

Finally, they assert that the amendments are arbitrary. It was perfectly reasonable for the Legislature to safeguard the constitutional rights of nonpublic schools and parents against SED's intrusions. But even if one disagrees, that is not a reason to void them.

This Court should dismiss the Complaint with prejudice.

BACKGROUND

I. New York Parents Choose Yeshivas and Other Parochial Schools to Educate Their Children Who Benefit from the Rigorous Education They Provide.

After the Holocaust, the American Jewish community set out to rebuild that which had been destroyed in Europe. That effort placed a primary focus on the creation of a network of Jewish schools:

> toward the end of World War II ... there were roughly 30 day schools with an enrollment of between 6,000 and 7,000 students in the entire country and only six were outside of New York City.

"Spotlight on Jewish Day School Education," Jewish Education Service of North America, Summer 2003. Today, there are more than 500 Jewish elementary and high schools in New York, enrolling approximately 180,000 students. Compl. ¶ 10; s*ee 2023-2024 Nonpublic Enrollment by Race and Ethnicity*, Information and Reporting Services.[1]

This dramatic increase is not a *result* of the growth of New York's Orthodox community, but rather the *catalyst* for that growth. For the Jewish community, schools are the central institution that provides for continuity and growth. As Lord Rabbi Jonathan Sacks explained:

> For Jews, education is not just what we know. It's who we are. No people ever cared for education more. Our ancestors were the first to make education a religious command, and the first to create a compulsory universal system of schooling—eighteen centuries before Britain. The rabbis valued study as higher even than prayer.
>
> The Egyptians built pyramids, the Greeks built temples, the Romans built amphitheaters. Jews build schools. They knew that to defend a county you need an army, but to defend a civilization you need education.

Professor Aaron Twerski, "An Education in Double Standards," *City Journal* (Dec. 4, 2023).

Jewish schools are colloquially referred to as yeshivas. *See, e.g.*, Compl. ¶ 5. While there is no central authority and schools are operated independently, there are several common features

[1] https://www.p12.nysed.gov/irs/statistics/nonpublic/.

of yeshiva education. Most prominent among them is that they offer a dual curriculum, with Jewish studies classes taught in the morning and secular studies in the afternoon. *See Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 344-45 (2d Cir. 2007). No matter what the subject, "classes are taught so that religious and Judaic concepts are reinforced." *Id.*; *see* Compl. ¶ 67. Even with their emphasis on Jewish Studies, yeshivas are among the top performing schools on the New York State Regents examinations. *See* Sandy Eller, Regents Data: Public Schools Lag Behind Yeshivas, *Jewish Press* (December 12, 2018).

For example, they accounted for 19 of the top 20 private schools for performance on New York's English Language Arts exam, nine of the top ten in Algebra 2 and Trigonometry, and seven of the top ten in Global History. *Id.* Their average results frequently rank 20-to-30 percentage points above the average results in comparable public schools. *Id.*

Parents choose yeshiva education for their children to fulfill the Biblical command that "You shall place these words of Mine upon your heart and your soul ... and you shall teach them to your children to speak in them." Deuteronomy 11:18; *see Westchester Day School*, 504 F.3d at 345 ("Orthodox Jews believe it is the parents' duty to teach the Torah to their children. Since most Orthodox parents lack the time to fulfill this obligation fully, they seek out a [Jewish] school."). They also choose them for their academic "rigor": "the length of the school day, the depth of the curricular material, and the almost-Socratic method employed even in yeshiva elementary schools provide students with valuable training across many adult disciplines." Twerski, *supra*.

Yeshivas benefit not only their individual students but also their religious communities. Numerous studies have confirmed that the single most determinative factor of involvement in Jewish life and observing Jewish tradition among adult members of the Jewish community is whether they attended a Jewish day school as a child. *See* Sylvia Barack Fishman, *Jewish*

Education and Jewish Identity Among Contemporary American Jews: Suggestions from Current Research, Bureau of Jewish Education, Center For Educational Research And Evaluation, (Boston, 1995); Schiff and Schneider, *Far Reaching Effects of Extensive Jewish Day School Education* (Yeshiva University, July 1994).

For this reason, yeshivas are the central and irreplaceable pillar of Orthodox Jewish life in New York. *See* Compl. ¶39. Parents choose yeshiva education for their children, because they want their children to have an education that is rooted in Jewish texts and informed by Jewish morality, history, culture, values, ideals, and hopes.

New York yeshivas are important not only to the New York Jewish community but to Jewish communities around the world. That is because more than half of all students in Jewish schools across the United States are educated in New York yeshivas. *See* "A Census of Jewish Day Schools in the United States," Avi Chai Foundation (2020), Table 8, page 22, available at https://avichai.org/knowledge_base/a-census-of-jewish-day-schools-2018-2019-2020/.

Although the yeshiva story is unique, it is not alone. In total, parents of more than 400,000 children in New York choose nonpublic school for them. *NYS Private School Enrollment*, Empire Center (August 19, 2022), https://www.empirecenter.org/publications/nys-private-school-enrollment/. A majority of these children attend parochial schools, including schools in the Catholic, Amish, Protestant and Islamic traditions. *Best New York Religiously Affiliated Private Schools (2024-25)*, Private School Review, https://www.privateschoolreview.com/new-york/religiously-affiliated-schools.

This case concerns legislation passed to protect the rights of parents who choose alternatives to the public schools for their children and to protect private and parochial schools from improper intrusion by New York State and local school authorities.

II. The Compulsory Education Law Respects the Right of Parents to Choose Parochial Schools, But Obligates Them to Arrange for "Substantially Equivalent" Instruction.

The central requirement of New York's Compulsory Education Law is that "each minor from six to sixteen years of age shall attend upon full time instruction." Education Law § 3205(1)(a). The law affords parents flexibility in meeting that requirement. Their children "may attend [instruction] at a public school" or they may attend "elsewhere." *Id.* § 3204(1).

When parents choose to instruct their children outside of public schools, they must arrange for their children to receive instruction that is "substantially equivalent to the instruction given ... at the public schools of the city or district where the minor resides." *Id.* § 3204(2)(i).

"It is generally up to the local school board, through the district superintendent, to determine whether its students are receiving a 'substantially equivalent' education." *Young Advocs. for Fair Educ. v. Cuomo*, 359 F. Supp. 3d 215, 220 (E.D.N.Y. 2019). But under the "Felder Amendment," the State Education Department (SED) is responsible for assessing the instruction provided at certain private schools: those that are "organized as a not-for-profit corporation, have a bilingual program, and operate during certain specified hours." *Id.*; *see* Education Law § 3204(2)(ii), (iii). Many of the schools covered by this provision are yeshivas. *See* Compl. ¶ 79.

III. Enforcement of the Compulsory Education Law Happens Through Individualized Proceedings in Family Court.

No matter where parents educate their children, the compulsory education obligation is directed at parents, not schools. *E.g.*, Education Law §§ 3212, 3233; *Parents for Educ. & Religious Liberty in Sch. v. Young*, 230 A.D.3d 83, 90 (Third Dep't 2024) ("*PEARLS II*"). The Education Law makes it among the "[d]uties of persons in parental relation" to "cause [a child] to attend upon instruction as hereinbefore required," Education Law § 3212, as it has for 150 years, L. 1874, ch. 421, § 1 ("All parents and those who have the care of children shall instruct them, or

cause them to be instructed, in spelling, reading, writing, English grammar, geography and arithmetic."). When parents breach their duty, the Education Law authorizes penalties, including fines and imprisonment, to be imposed on them. Education Law § 3233. But the Education Law does not impose any penalties on private schools or private instructors. *See id.* §§ 3233, 3234; *PEARLS II*, 230 A.D.3d at 90 ("The Education Law does not provide for any direct penalty upon nonpublic schools.").

Unsurprisingly, then, enforcement of the law happens in Family Court. A child who is not receiving the required instruction is deemed "truant." SED, *Substantial Equivalency of Instruction in Nonpublic Schools* (May 2021 Update).[2] When state or local officials suspect a child is truant, they can bring an individual proceeding against the parents in that court. *See id.*; *see also* Education Law §§ 3232-34; *see* 12 Law and the Family New York § 89:80 (2023 ed.).

If the parent has arranged for the child to receive instruction elsewhere than at a public school, the parent is given the opportunity to demonstrate that the child's instruction is substantially equivalent to that offered in the local public schools. *Id.*; *see Matter of Christa H.*, 513 N.Y.S.2d 65, 65 (4th Dep't 1987). They are not limited to education received at a single location, such as a nonpublic school, but may instead combine instruction received through multiple sources. *See, e.g.*, *In re Myers*, 119 N.Y.S.2d 98 (Dom. Rel. Ct. 1953); *see also In re Lash*, 401 N.Y.S.2d 124 (Fam. Ct. 1977).

A judge then must weigh the evidence presented by all parties to the case and determine whether the child has received instruction that is substantially equivalent to that in the public schools. *See, e.g.*, *Matter of Blackwelder*, 528 N.Y.S.2d 759, 761 (Sup. Ct. 1988) (hearing testimony "concerning the curriculum, procedures, activities and test results of the educational

[2] https://www.p12.nysed.gov/nonpub/guidelinesequivofinstruction.html.

process utilized" as well as expert testimony). The judge must also independently determine that the child's "physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired," as a "result of the failure of [the] parent" in "supplying the child with adequate ... education,' Family Court Act § 1012.

In its published guidance, the State Education Department continues to recognize that this Family Court proceeding is the exclusive mechanism for enforcing the Compulsory Education Law's "substantially equivalent" mandate. It admits that it "has no direct authority over a nonpublic school" and that the proper enforcement mechanism is "petitions … filed in Family Court by the public school authorities to the effect that their children are truant." *SED*, *Substantial Equivalency of Instruction in Nonpublic Schools*, *supra*.

IV. The State Education Department Promulgates Regulations that Assert an Enforcement Power Against Parochial Schools.

Over the past several years, however, SED has repeatedly attempted to assert greater control over parochial and private schools, with guidelines and regulations, which ultimately led to the legislation challenged in this case.

In November 2018, SED issued a comprehensive set of rules governing all nonpublic schools in New York (the "2018 Guidelines"). Among other things, the 2018 Guidelines imposed rigid instruction mandates on nonpublic schools and required public officials to inspect all nonpublic schools to determine whether they provide instruction substantially equivalent to that offered in public schools. *See* Compl. ¶ 58. Parochial and private schools and related organizations challenged the 2018 Guidelines, which were struck down as "null and void" on April 17, 2019, by the Supreme Court. *See N.Y. State Ass'n of Indep. Schs. v. Elia*, 110 N.Y.S.3d 513 (Albany Cnty. Sup. Ct. 2019).

In early 2022, SED promulgated the regulations directly responsible for the recent amendments at issue here. The 2022 Regulations require local school authorities to "make substantial equivalency determinations for all nonpublic schools within their geographical boundaries" other than for schools exempted based on enumerated criteria. 8 N.Y.C.R.R. § 130.2. They list "seven 'pathways' that LSAs could use to determine whether a school was meeting applicable requirements." Compl. ¶ 61. Upon a determination that a nonpublic school does not provide substantially equivalent instruction, "the nonpublic school shall no longer be deemed a school which provides compulsory education fulfilling the requirements of Article 65 of the Education Law." 8 N.Y.C.R.R. § 130.8(d)(7)(i).

PEARLS and Torah Umesorah challenged the 2022 Regulations, believing that SED would use them to close parochial schools—something it has no statutory authority to accomplish. Compl. ¶ 62. In particular, they were concerned that SED would interpret the provision stating that a non-equivalent school "shall no longer be deemed a school which provides compulsory education fulfilling the requirements of Article 65 of the Education Law" to mean that a non-equivalent school shall no longer be considered a school at all, unable to enroll students and forced to close its doors. Albany Supreme Court saw the same threat and voided that provision. *Parents for Educ. & Religious Liberty in Sch. v. Young*, 190 N.Y.S.3d 816 (Sup. Ct. 2023) ("*PEARLS I*").

The Appellate Division reversed but explained that the provisions do not "impose a penalty upon nonpublic schools," and that "the loss of status as a substantially equivalent nonpublic school is not equivalent to closure." *PEARLS II*, 230 A.D.3d at 90. It then granted permission to appeal to the Court of Appeals.

V. The Legislature Responds to SED's Overreach by Amending the Education Law.

During that appeal, SED sought to deny state aid to children attending the few yeshivas deemed not to provide substantially equivalent instruction. This included ceasing "child nutrition programs, transportation, textbooks," and special education services at the yeshivas. Exhibit A, Decision and Order in *Yeshiva Mosdos Chasidei Square Boro Park v. New York State Education Department*, Index No. 906775-25, (Albany Cnty. Sup. Ct., September 3, 2025) ("*YMCS*"), at 4.

On May 9, 2025, the Legislature responded by amending the Education Law to protect private schools from SED's overreach. Under the 2025 Amendments, if a school meets any of several criteria in the amended statute, instruction at that school is deemed substantially equivalent. Education Law § 3204(6)(a). The amendments broadened the regulations' existing assessment "pathway" to substantial equivalence. *See id.* § 3204(6)(a)(vi)-(vii). The amendments also create a two-year "phase-in period" during which nonpublic schools "shall be deemed to have met the criteria" of the annual assessment pathway. *Id.* § 3204(6)(b)(iii).

Even after the Legislature acted, SED instructed the NYC Department of Education that the yeshivas "were not to be provided with any services or funding." Ex. A (*YMCS* Order) at 6. In short, SED said that, under the 2022 Regulations, these institutions were not "schools" and therefore not subject to the recent amendments. *Id.*

VI. The Court of Appeals Construes the 2022 Regulations to Respect the Rights of Parents and Parochial Schools.

A few weeks later, the Court of Appeals held that the 2022 Regulations did not go nearly so far. Its decision upheld the regulations as facially consistent with the Education Law, on the ground that they did not countenance the closure of nonpublic schools. It explained that "nothing in these provisions requires that parents 'unenroll' their children from a nonpublic school deemed not to provide substantially equivalent instruction. Nor do the regulations authorize school

closures. The provisions merely state that the nonpublic school does not provide substantially equivalent instruction …. The parent or custodian must determine how then to ensure their compliance with the Education Law." *Parents for Educ. & Religious Liberty in Sch. v. Young*, No. 56, 2025 WL 1697944, at *4 (N.Y. June 18, 2025) ("*PEARLS III*").

The Court noted the 2025 Amendments, but did not rely upon them or address their validity, *see id.* at *3 & n.5. Nor did its decision, which addressed only SED's statutory authority to promulgate the regulations, *see id.* at *4, rest on grounds related to the Education Article of New York's Constitution, which was not cited in either party's briefs or at oral argument.

The Court of Appeals decision, like the Education Law itself, strikes a "carefully balanced ruling." Exhibit B, Michael Broyde, *NY Court Strikes Balance on Secular Standards, Religious Schools*, Bloomberg Law. The Court "affirmed the authority of the State Education Department to evaluate New York's 'substantial equivalency' law in these schools—but held that schools can't be closed and students can't be forcibly removed for failing to meet those standards." *Id.* Under the decision, "[p]arents must ensure compliance, whether by enrolling their child elsewhere or supplementing education in other ways," but SED "can't impose compliance by force." *Id.* This balance was necessary to a showdown under the First Amendment of the United States Constitution "that a more aggressive enforcement scheme might have provoked." *Id.*

Relying on the Court of Appeal decision, Albany Supreme Court subsequently "annulled" SED's determination that the yeshivas previously deemed non-equivalent could not benefit from the 2025 Amendments and ordered that "upon electing to utilize the new assessment pathways," the yeshivas "immediately satisfy the applicable substantial equivalence criteria." Ex. A (*YMCS* Order) at 8-9; *see* Compl. ¶ 110.

ARGUMENT

Plaintiffs' Complaint raises six separate causes of action but does not specify the legal basis for most of them. This fact alone could be grounds for dismissing many of their claims. *See Doe v. Parson*, 960 F.3d 1115, 1116-17 (8th Cir. 2020). Construing their complaint with grace, however, they appear to raise four claims: First, that the Felder Amendment and 2025 Amendments are unconstitutionally "vague." Second, that yeshiva students have been deprived of a supposed right to a "substantially equivalent education" under the Compulsory Education Law. Third, that they have been deprived of a "sound basic education" under the Education Article of New York's constitution. Fourth, that the amendments to the Education Law are "arbitrary, capricious, and unreasonable."

The State's brief provides many reasons why the Complaint fails to state a legally cognizable claim and must therefore be dismissed. PEARLS and Torah Umesorah endeavor not to duplicate those reasons here, focusing instead on additional or different reasons to dismiss.

I. The Education Law is Not Vague.

Plaintiffs' fifth cause of action is the only one that specifies its legal basis, and it provides a useful place to begin. Plaintiffs allege that the Felder Amendment and the May 2025 Budget Bill are "vague," depriving them of their due process rights under New York's constitution. Compl. ¶ 159.

The State thoroughly explains why this claim is dead on arrival: neither the Felder Amendment nor the Budget Bill regulate Plaintiffs' conduct and therefore would not deprive them of any due process right, even if they were vague. *See* State Br., NYSCEF Doc. No. 60, 16-17. The State also thoroughly explains why the Felder Amendment is not vague, *see id.* at 18-20. Because the State spends less time discussing the 2025 Budget Bill, PEARLS and Torah Umesorah explain why it is also not vague.

Section 22-e of Part A of the legislation adds subdivision 6 to Section 3204 of the Education Law. New subdivision 6 says:

> Notwithstanding any law, rule, or regulation to the contrary … [i]nstruction at a nonpublic school satisfies all the requirements of this part applicable to instruction, including subdivision two of this section [which contains the substantial equivalence mandate] … and shall thereby qualify as and be finally recognized to be at least substantially equivalent …, if such nonpublic school is: …
>
> (vi) a nonpublic school in which the percentage of students who score "proficient" on a year-end summative or cumulative assessment and taken in the same subject areas and for the same grade levels as the annual New York state testing program to comply with the federal Every Student Succeeds Act is equal to or greater than one of the following metrics, and such school has declared the intended use of such metric at the beginning of the school year:
>
> > (1) the percentage of similarly situated public school students scoring at the "proficient" level on New York state testing program tests taken in the same subject areas and grade levels in the school district that serves the same geographic area as the nonpublic school is located; or
> >
> > (2) the percentage of similarly situated public school students statewide scoring at the "proficient" level on New York state testing program tests taken in the same subject areas and grade levels; **or**
>
> (vii) a nonpublic school that administers a year-end summative or cumulative assessment taken in substantially the same subject areas and same grade levels as the annual New York state testing program to comply with the federal Every Student Succeeds Act, has a three-year average participation rate that is equal to or greater than the three-year statewide average participation rate, and uses the results to assess the school's educational program and to seek to improve instruction and its students' performance on such tests.

Education Law § 3204(6)(a) (emphasis added). The amendments also state that "[a]ll assessments and materials used in connection with such assessments shall be culturally competent and respectful of cultural curricula and pedagogy." *Id.* § 3204(6)(b)(i)(1).

In short, this provision establishes that the instruction provided at a nonpublic school is substantially equivalent if it administers annual assessments and (1) does as well on them as similar

public schools or (2) uses the results of those assessments to seek to improve instruction and performance.

The new legislation also creates a "phase-in period" to "allow for adequate preparation of students in connection with" the assessments. *Id.* § 3204(6)(b)(iii). "During such phase-in period, a nonpublic school … **shall be deemed to have met the criteria in subparagraphs (vi) and (vii) of paragraph (a) of this subdivision**, [the proficiency and improvement pathways] for purposes of all components of this subdivision." *Id.* § 3204(6)(b)(iii) (emphasis added). In other words, during the phase-in period, instruction at a nonpublic school is considered substantially equivalent. *See id.* § 3204(6)(a) (stating that instruction at a school that satisfies those criteria is deemed substantially equivalent).

The phase-in period starts "upon the effective date of this subdivision" (which is April 1, 2025), "**including prior to the administration of any year-end … assessment**." *Id.* § 3204(6)(b)(iii) (emphasis added); *see* May 9, 2025, Budget Bill, Part A, § 28 (giving the effective date). It "shall continue until the first cohort entering second grade at such nonpublic school after such effective date completes the year-end … assessment for the third grade" and "**shall be applicable to all nonpublic schools**," *id.* § 3204(6)(b)(iii) (emphasis added). So the phase-in period lasts for about two years for all nonpublic schools, and during that time instruction at all nonpublic schools is deemed substantially equivalent. And schools that choose to implement assessments are entitled to an additional phase-in period that can last through the 2032-2033 school year, so long as they continue to conduct assessments. *Id.* § 3204(6)(b)(iii).

Plaintiffs allege "ambiguity" in two aspects of the 2025 Amendments. Neither is correct.

First, they criticize the provision stating that the "instruction at a nonpublic school" satisfying any pathway will "be finally recognized to be at least substantially equivalent." The

word "finally," they say, suggests that a nonpublic school could conduct assessments "during a single year" and thereby "permanently establish that school as being substantially equivalent." Compl. ¶ 147. But the two-tiered grace period makes it plain that schools must continue to conduct assessments if they wish to continue satisfying this pathway. The Legislature employed the word "finally" to make crystal clear that it had displaced SED's previous determinations that certain schools were not substantially equivalent. *See generally* Ex. A (*YMCS* Order). This is plain from the surrounding language, which says that the provision applies "[n]otwithstanding any law, rule, or regulation to the contrary," and from the historical context of the bill's passage, *see supra* 9.

Second, they allege vagueness in the need for assessments to be "culturally competent and respectful of cultural curricula and pedagogy." Compl. ¶ 148. Their argument seems to be that the terms "cultural" and "respectful" lack "accepted legal or professional definitions." Compl. ¶¶ 144, 148. That is not true. SED has provided plenty of guidance about culturally respectful teaching methods in its "Culturally Responsive-Sustaining Education Framework,"[3] including extensive discussion on the meaning of "culture," *id.* at 11, and how to respect it, *id.* at 20.

II. The Plaintiffs Have Not Been Deprived of a "Substantially Equivalent Education."

Plaintiffs' second, fourth, and sixth causes of action claim they have been deprived of their supposed right to a "substantially equivalent education." Education Law § 3204(2)(i). They allege that the State Defendants deprived them of this supposed right by allowing yeshivas to utilize the "pathways" in the statutes and regulations to demonstrate that the instruction they provide is substantially equivalent, Compl. ¶¶ 159, 163, by enacting a temporary grace period for all students attending nonpublic schools that elect to use the assessments pathways, *id.* ¶ 163, and by refusing

[3] https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf.

to give the State Education Department broader enforcement authority under the Education Law, *id.* ¶ 167. This claim must be dismissed for several reasons.

First, there is no right to a substantially equivalent education. Parents who choose alternatives to public school have a duty to arrange for "substantially equivalent … instruction," but even that is enforceable only when the parent's "failure [in] supplying the child with adequate ... education" has also impaired the child's "physical, mental or emotional condition," Family Court Act § 1012. That is an individual determination to be made through an individualized proceeding in Family Court, not through a class action lawsuit.

Second, even if there were such a right, the Legislature would be entirely free to define, and redefine, that right. Statutory rights created by the Legislature remain creatures of the Legislature, and it "may change or take away such rights" as it pleases. *In re McGlone's Will*, 284 N.Y. 527, 533 (1940). So long as it respects the state and federal constitutions, it is up to the Legislature to define the scope of parents' "substantially equivalent" obligation and to determine the process for enforcing the law against parents who violate it. The Legislature has deemed that the instruction provided at Plaintiffs' schools is substantially equivalent for at least another year. The Plaintiffs are simply not entitled to a former version of the statute, that provided fewer options for parents to demonstrate compliance, or to their desired version of the statute, which would see additional enforcement powers granted to SED.

Third, Plaintiffs have no cause of action to enforce their supposed right to a substantially equivalent education. The Compulsory Education Law contains no express right of action. Nor should this Court infer one, given that the statute has its own "potent or extensive enforcement mechanism" that rules out the enforcement through private lawsuit. *Rhodes v. Herz*, 84 A.D.3d 1, 10-11 (1st Dep't 2011); *see Uhr ex rel. Uhr v. E. Greenbush Cent. Sch. Dist.*, 94 N.Y.2d 32, 40

(1999). That enforcement mechanism is individualized proceedings in Family Courts, which have specific procedures and specific burdens of proof. *PEARLS III*, 2025 WL 1697944, at *1; SED, *Substantial Equivalency of Instruction in Nonpublic Schools*, *supra*.[4]

Fourth, even if the Compulsory Education Law did create a silent right of action, these are not the correct defendants. The obligation to arrange for substantially equivalent instruction lies with the parent, not with the State or with the child's nonpublic school. *Supra* 5.

III. The Plaintiffs Have Not Been Deprived of a "Sound Basic Education."

Plaintiffs' first, third, and sixth causes of action claim they have been deprived of their right to a "sound basic education" under this state's constitution. They allege that the State Defendants have allowed yeshivas to "deny them adequate teaching," Compl. ¶ 157, by enacting the Felder Amendment, *id.* ¶ 161, and by refusing to give the State Education Department broader enforcement power, *id.* ¶ 167.

Private schools have no constitutional duty to provide a "sound basic education." The Education Article of New York's Constitution mandates that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const, art XI, § 1. The Court of Appeals has interpreted this provision to require the State "to offer all children the opportunity of a sound basic education." *Campaign for*

[4] The State's argument that the Compulsory Education Law's "potent and extensive enforcement mechanism" is to be found in SED enforcement actions against "nonconforming schools," State Br. 13, flatly contradicts the position it took before the Court of Appeals last year and the Court's ruling. There, its position was that the Legislature had forgotten to include an enforcement mechanism and thus that the regulations permissibly "fill that enforcement gap." Exhibit C, *PEARLS III* SED Br., at 25; *see id.* ("[T]he Education Law does not prescribe the process by which nonpublic schools should be reviewed for substantial equivalency. As a result, the Education Law leaves a gap between the substantive standards it imposes and the enforcement mechanism to ensure those standards are met."). Both positions are wrong. The Legislature did establish an exclusive enforcement mechanism; it is simply not the one some SED officials would have chosen. The Court of Appeals ruling confirms that "Family Court" is where to adjudicate a "[f]ailure to comply with the … substantial equivalency requirement." *PEARLS III*, 2025 WL 1697944, at *1.

Fiscal Equity, Inc. v. State, 8 N.Y.3d 14, 20 (2006) (*CFE* III). But the duty to offer is not a duty to force parents and students to accept. Hence, the State fulfills its duty when it ensures "that New York's *public schools* are able to teach 'the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.'" *Id.* (emphasis added). The State has no obligation to ensure that nonpublic schools provide a "sound basic education."

Plaintiffs suggest that last year's Court of Appeals decision "specifically held that NY Constitution, article XI, § 1, applies to students attending nonpublic schools." Compl. ¶ 119. That is false. As explained above, the decision held only that SED's 2022 Regulations were not facially inconsistent with the Education Law because they did not authorize penalties against nonpublic schools. *PEARLS III*, 2025 WL 1697944, at *4. Neither party cited the Education Article in their briefs, and the issue was not before the Court. The Court simply observed, in the background section of its opinion, that the Education Law creates the "system of free common schools" mentioned in New York's constitution and that the same law requires custodians of children educated outside of that system to ensure that they receive "substantially equivalent" instruction to those educated within it. *Id.* at *1.

Extending the State's obligation to provide a "sound basic education" to children attending nonpublic schools would be a sea change in the law, unlikely to be accomplished by stray statements in the background section of a decision that had no reason to address the issue. The most common way to assert a violation of this provision is to allege "deficient funding." *IntegrateNYC, Inc. v. State*, No. 75, 2025 WL 2979535, at *3 (N.Y. Oct. 23, 2025). So if the State is obligated to ensure that private schools provide a sound basic education, then it must also provide adequate funding for them to do so. *See generally Campaign for Fiscal Equity, Inc. v.*

State, 86 N.Y.2d 307 (1995) ("*CFE I*"); *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893 (2003) ("*CFE II*"); *CFE III*, 8 N.Y.3d 14.

None of the foregoing should be read to suggest that Plaintiffs' yeshivas, or other yeshivas in the State, are failing to provide a sound basic education. As detailed above, yeshivas offer a rigorous course of instruction and account for many of the state's top schools. *See supra* 3. Their instruction goes well beyond the "sound basic education" that provides the constitutional floor for public schools. Consistent with these facts, even if the sound basic education requirement applied to students attending nonpublic school, Plaintiffs' Complaint lacks any allegations about district-wide deficiencies in educational outcomes, which are necessary to state a claim under the Education Article. *IntegrateNYC*, 2025 WL 2979535, at *3; *see* State Br. 6-7.

IV. The Education Law Is Not Arbitrary, Capricious, or Unreasonable.

Plaintiffs' fourth cause of action also asserts that the Felder Amendment and the 2025 Amendments are "arbitrary, capricious, and unreasonable" because they include a grace period and because they provide yeshivas and other schools with additional pathways for establishing that the instruction they offer is substantially equivalent. Compl. ¶ 163; *see also* Compl. ¶¶ 131-41.

As the State explains, this claim fails because this is not an Article 78 proceeding, and there is no basis for voiding arbitrary or capricious legislation. State Br. 15 n.5. But in addition, the challenged legislation is not arbitrary, capricious, or unreasonable.

The Legislature has good reasons for limiting the State's intrusion into the instruction at nonpublic schools. "Private 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) (citing *Pierce v. Society of Sisters*, 268 U. S. 510 (1925)). Under the federal constitution, States have only a "limited right to regulate such schools," and under New York's constitution, the Legislature cannot delegate this limited right to the

Executive. *Id.* It is therefore perfectly reasonable for the Legislature to protect a parent's right to "direct the rearing and education of their children," *Zorach v. Clauson*, 303 N.Y. 161, 173 (1951), *aff'd*, 343 U.S. 306 (1952), from improper executive intrusion, as the challenged amendments do.

The Legislature also had a good reason for including a grace period in the legislation that established its pathways. Grace periods are common in the law and serve to provide an "orderly transition" to new legal rules, such as those established in the 2025 Amendments. *Exela Pharma Scis., LLC v. Sandoz, Inc.*, 486 F. Supp. 3d 1001, 1018 (W.D.N.C. 2020).

CONCLUSION

This Court should dismiss the Complaint in its entirety and with prejudice.

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Respectfully Submitted,

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