



**Albany**  
**UPDATE**  
NEW YORKERS FOR CONSTITUTIONAL FREEDOMS

PO Box 107  
Spencerport, NY 14559-0107

Ph. 585-225-2340  
info@AlbanyUpdate.com

---

September 1, 2019

**VIA E-MAIL (seregcomments@nysed.gov)**

Ms. Christina Coughlin  
New York State Education Department  
SORIS  
89 Washington Avenue  
Room 1075 EBA  
Albany, NY 12234

**Re: Proposed Rule Regarding Substantially Equivalent Instruction for Nonpublic School Students – I.D. No. EDU-27-19-00010-P**

Dear Ms. Coughlin:

New Yorkers for Constitutional Freedoms (NYCF) is New York’s statewide evangelical Christian advocacy organization. Please accept this correspondence as a public comment on the proposed rule relating to substantially equivalent education for nonpublic school students.

According to Section 3204 of the Education Law, “[i]nstruction given to a minor elsewhere than at a public school shall be at least substantially equivalent” to the instruction that student would receive at his or her local public school. The stated purpose of the proposed rule (“the Rule”) is to “provide guidance to local school authorities to assist them in fulfilling their responsibilities under the Compulsory Education Law.” The Rule would require public school districts to conduct substantial equivalency reviews at all nonpublic schools within their respective district boundaries by 2024. Thereafter, it would require school districts to review nonpublic schools on an annual basis. Following the required reviews, school districts would be required to make recommendations regarding nonpublic schools within their boundaries to the New York State Commissioner of Education or to the school boards in their respective districts, depending on the type of nonpublic school. If a determination were made—whether by the Commissioner or by a school board—that a nonpublic school’s instruction fell beneath the substantial equivalency requirement, students continuing to attend that school would be considered truant. In other words, a determination that a

nonpublic school is not “substantially equivalent” would, in practical terms, put that school out of business.

Before we discuss our many concerns with the Rule, we will begin by commenting on the history behind it. In November 2018, NYSED announced new guidelines regarding substantially equivalent education for nonpublic school students. If implemented, the guidelines would have dramatically changed the relationship between nonpublic schools and the school districts in which they are situated. After the guidelines were nullified in court, NYSED published the Rule and solicited public comments on it—just as NYSED ought to have done in the first place. NYSED’s attempt to circumvent the State Administrative Procedures Act in regard to this important issue was regrettable.

Our specific concerns about the Rule include the following:

- **Unfairness.** In essence, the Rule would give school districts—some of which have adversarial relationships with nonpublic schools and compete with them to attract students—a major role in reviewing the effectiveness of those nonpublic schools. The Rule would make it possible for school districts to damage their nonpublic counterparts by giving them negative reviews. Furthermore, some types of nonpublic schools could be put out of business altogether by local school boards. There is a built-in conflict of interest here. Also, school districts reviewing nonpublic schools for substantial equivalency are required to assess whether those schools offer instruction on a wide range of subjects (for example, English second language instruction; career development and occupational studies, health education, and family and consumer sciences in the primary grades; and career and technical education in grades seven and eight). Christian schools, which tend to be small, may not have the resources to provide the same breadth of specialized subjects as public schools do. This makes the criteria unfair to them.
- **Deficient procedural safeguards.** The Rule recites that the substantial equivalency review process should be “objective, mindful, sensitive, respectful, and consistent.” However, the procedures laid out in the Rule fall short of these goals. If a school district finds that a nonpublic school has not met the substantial equivalency requirement, the Rule provides that the district “*should* notify nonpublic school administration of the date that the board of education will consider” the school’s compliance (emphasis added). It adds that “the nonpublic school *should* be provided an opportunity to present additional relevant materials and/or a written statement to the board of education prior to its determination” (emphasis added). This language is completely unacceptable. Appallingly, it would allow a local school board to make a decision about the continued existence

of a nonpublic school without that school's knowledge. At the very least, the Rule should be amended to require a school district to notify a nonpublic school if its substantial equivalency is to be considered at the school board level, to provide said nonpublic school with a certain amount of advance notice, and to require that board give the nonpublic school the opportunity to be heard concerning the substantial equivalency review.

- **Excessiveness.** The Regulatory Impact Statement accompanying the Rule indicates that several years ago, class action lawsuits were filed challenging the instructional programs offered at a small fraction of New York's nonpublic schools. The controversy surrounding the alleged deficiencies at these schools has, in part, given rise to the proposed Rule. It is completely unnecessary to subject hundreds of nonpublic schools across New York to an onerous new review process simply because of a contention that a few schools are falling short of their obligations. Also, many nonpublic schools are reviewed on a regular basis in order to maintain their respective accreditations; for these schools, a substantial equivalency review would be a waste of time. NYSED can, and should, address potential problems at a small number of nonpublic schools without imposing draconian new requirements upon the many other nonpublic schools in the state that have reputations for excellence. At the very least, the Rule should be revised to exempt nonpublic schools from accreditation reviews when available indicia make it clear that those schools routinely exceed expectations, or when those schools already receive regular reviews from reputable accreditation organizations.

The Rule would jeopardize the continued existence of Christian schools and other nonpublic schools across the State of New York. We strongly urge NYSED to withdraw it in its entirety. Alternatively, we urge NYSED to make major revisions to the Rule in accordance with the concerns outlined above.

Thank you for your consideration.

In His Service,



Rev. Jason J. McGuire  
Executive Director