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

Christina Coughlin, Assistant Commissioner  
New York State Education Department  
SORIS  
89 Washington Avenue, Room 1078 EBA  
Albany, New York 12234

**Re: Substantially Equivalent Instruction for Nonpublic School Students  
I.D. No. EDU-13-22-00025-P**

Dear Ms. Coughlin:

New Yorkers for Constitutional Freedoms (NYCF) is New York's statewide evangelical Christian advocacy organization. Please accept this correspondence as our public comment on the above-referenced proposed regulations pertaining to substantial equivalency.

We have the following concerns about the proposed regulations:

1. Local public school authority (LSA) involvement in substantial equivalency reviews. The proposed Part 130, Sections 130.3 and 130.11 of the Commissioner's regulations provide that LSAs shall perform substantial equivalency reviews for nonpublic schools. NYCF opposes these provisions and opposes any involvement by LSAs in substantial equivalency reviews. LSAs lack statutory authority to conduct these reviews. Furthermore, LSAs often compete for students with nonpublic schools; LSA involvement in substantial equivalency reviews would create an inherent conflict of interest. In some instances, LSAs may not be funded or staffed to conduct substantial equivalency reviews. If substantial equivalency reviews of nonpublic schools are to be conducted, the Commissioner should conduct them using New York State Education Department (NYSED) staff.
2. Nonpublic schools deemed substantially equivalent. The proposed Part 130, Section 130.3 of the Commissioner's regulations states that nonpublic schools shall be deemed substantially equivalent without the need for a substantial equivalency review if they submit sufficient evidence to demonstrate that they meet certain criteria. This evidence is to be submitted on an annual basis. First, the state should

not require nonpublic schools to submit evidence every single year; this requirement is excessive. Second, it would be advisable for the regulatory language to be amended to state how nonpublic schools shall become informed of the details regarding these submissions, including when the submissions will be required and how they should be submitted. An amendment along these lines would limit the potential for confusion, missed deadlines, and similar problems. We recommend that this section be rewritten to require that this information be made available on the Department's website.

3. Accreditation. The proposed Part 130, Section 130.3(3) of the Commissioner's regulations states that nonpublic schools that have been accredited by NYSED-approved accrediting bodies shall be deemed substantially equivalent and shall not be required to undergo substantial equivalency review. The language describing the types of accrediting bodies that would be acceptable to NYSED is problematic and incomplete in its current form. Specifically, the proposed regulation states that any such accrediting body "shall require nonpublic schools seeking accreditation to have curriculum that is informed by research..." This language is unclear and should be removed.

Also, language along the following lines should be added to this section: "On an annual basis, the Department shall publish on its website a list of accrediting bodies that have been approved by the Department for purposes of demonstrating compliance with the requirements of this Part. In determining which accrediting bodies shall be approved by the Department for purposes of demonstrating compliance with the requirements of this Part, the Department shall not take into consideration whether or not the accrediting body is religiously affiliated or identifies with a faith tradition."

4. Complaints. The proposed Part 130, Section 130.11 of the Commissioner's regulations is unacceptable in its current form. This section would allow the Commissioner to "direct an LSA to investigate a nonpublic school if the Commissioner receives a complaint regarding the substantial equivalency of instruction at such nonpublic school, or if the Commissioner otherwise has concern regarding the substantial equivalency of instruction at a nonpublic school, regardless of whether a complaint has been submitted."

The first problem with the proposed regulation is that it empowers the Commissioner to direct LSAs to investigate nonpublic schools that have been the subject of complaints. As noted above, LSA involvement in substantial equivalency reviews is inappropriate. If the Commissioner receives a complaint about a nonpublic school

and wishes to investigate, the Commissioner should conduct that investigation using NYSED personnel.

The second problem with the proposed regulation is that it is far too loose. The regulation would allow anyone to make a complaint that could trigger a substantial equivalency investigation, regardless of whether the complainant has any connection to the nonpublic school in question. The regulation should be rewritten to state that the Commissioner shall only accept substantial equivalency complaints about a nonpublic school from persons connected to the school that have personal knowledge about that school. Possible examples of such persons include parents of current or former students. If the proposed regulation does not provide appropriate boundaries regarding who may file substantial equivalency complaints, persons with no connection to a given nonpublic school or the community in which it is situated could harass that school and waste time and resources at the Commissioner's office by filing complaints that are baseless or rooted in animus.

Other problems with the proposed regulation include the following:

- The regulation empowers the Commissioner to call for a substantial equivalency investigation based simply on a vague and subjective "concern" about the school. Something more than "concern" should be required to trigger an extensive and invasive investigation of a nonpublic school.
- The proposed regulation does not allow nonpublic schools an opportunity to respond to complaints or concerns before the Commissioner decides whether or not to call for a substantial equivalency investigation.
- The proposed regulation does not clearly state what form substantial equivalency investigations would take. Would such investigations use the same criteria and procedures as other substantial equivalency reviews, or would they be somehow different?

This entire section is problematic. The language should be tightened and clarified.

5. Appeals. The proposed Part 130, Section 130.12 of the Commissioner's regulations states that "persons considering themselves aggrieved by an LSA's substantial equivalency determination may file an appeal to the Commissioner..." If LSAs are removed from the substantial equivalency review process, this section will become unnecessary. If LSAs remain involved in the process, the language of this section should be revised and narrowed. Nonpublic schools that have received negative

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substantial equivalency determinations from their respective LSAs should be allowed to appeal those determinations to the Commissioner. No one else should be accorded appeal rights; certainly, no one should be allowed to appeal positive substantial equivalency determinations to the Commissioner. Allowing such appeals would waste the time of everyone involved and could lead to unfair harassment of nonpublic schools.

New Yorkers for Constitutional Freedoms thanks the New York State Education Department for including the proposed Part 130, Section 130.3 of the Commissioner's regulations, which allows nonpublic schools that meet certain criteria to be deemed substantially equivalent without undergoing substantial equivalency reviews.

Thank you for your consideration of this public comment.

Respectfully,



Jason J. McGuire  
Executive Director