



New York State
EDUCATION DEPARTMENT

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Proposed Regulations for Substantially Equivalent Instruction for Nonpublic School Students

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Background – Substantial Equivalence

- School districts are required to ensure that their resident children of school age are ‘attending upon instruction.’
- For children who attend religious and independent schools, the instruction must be ‘substantially equivalent to the instruction given ... at the public schools of the city or district where the [child] resides.’
- The term ‘substantially equivalent’ first appeared in the Education Law in 1895.
- For decades, NYSED provided guidance for public school officials to determine substantial equivalency.
- In response to questions from the field, the Department engaged in a consultative process for approximately two years to update the guidance and released updated guidance in November 2018.

Who Makes a Substantial Equivalence Determination

- **LSAs make substantial equivalency determinations for all nonpublic schools within their geographical boundaries, except registered high schools, state-approved private special education schools, state-operated and state-supported schools, and nonpublic schools for which the Commissioner is required to make a substantial equivalency determination pursuant to Education Law §3204(2)(ii)-(iii).**
- **For schools that meet the criteria for a Commissioner's determination, LSAs must review the schools for substantial equivalency and forward a recommendation and supporting documentation to the Commissioner for a final determination.**

Key Elements of Proposed Regulation

The proposed regulation:

- **Recommends that new schools be reviewed within three years of operation and that existing schools be reviewed by the end of the 2022-23 school year or as soon as practicable and regularly thereafter;**
- **Requires LSAs to annually file a list of nonpublic schools subject to their review and Commissioner's review by Sep. 1, 2020 and each September 1 thereafter; and**
- **Requires LSAs to file an annual update regarding the status of substantial equivalency reviews by Sep. 1, 2024 and each September 1 thereafter.**

Key Elements of Proposed Regulation

The proposed regulation:

- Provides due process to the nonpublic school throughout the substantial equivalency process;
- Focuses on providing instruction in subject areas required by law and does not include reference to the state learning standards;
- Allows for integrated curriculum that delivers content by incorporating more than one subject into the content of a course; and
- Clarifies that, like registered high schools, state-approved private special education schools, state-supported and state-operated schools are not subject to substantial equivalency reviews because they are already subject to Department review.

Criteria for Determination

- **Instruction given only by a competent teacher;**
- **English is the language of instruction for common branch subjects; and**
- **Students who have limited English proficiency are provided with instructional programs enabling them to make progress toward English language proficiency.**

Criteria for Determination

For Grades 1-6: the school program must incorporate instruction in the following subjects:

- **math including arithmetic, science and technology;**
- **English language arts;**
- **social studies;**
- **the arts;**
- **career development and occupational studies;**
- **health;**
- **physical education; and**
- **family and consumer sciences**

Criteria for Determination

For Grades 7-8: the school program must incorporate instruction in the following subjects:

- **mathematics (two units of study);**
- **English language arts (two units of study);**
- **social studies (two units of study);**
- **science (two units of study);**
- **career and technical education;**
- **physical education;**
- **health education (one-half unit of study);**
- **visual arts (one-half unit of study);**
- **music (one-half unit of study);**
- **library and information skills; and**
- **career development and occupational studies**

Criteria for Determination

For Grades 9-12: the school program must incorporate instruction in the following subjects:

- **English (four units of study),**
- **social studies (four units of study),**
- **mathematics (three units of study),**
- **science (three units of study),**
- **health (one-half unit of study),**
- **physical education (two units of study), and**
- **the arts (one unit of study)**

Certain courses of instruction required under state law (these include: patriotism and citizenship; physical fitness; health; and highway safety)

Criteria for Determination

For elementary and middle nonpublic schools subject to a Commissioner's determination, the LSA, when making a recommendation and the Commissioner in his/her final determination, must take into consideration whether the curriculum provides:

- Academically rigorous instruction that develops critical thinking skills,
- English that will prepare pupils 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;
- Math that will prepare pupils to solve real world problems using both number sense and fluency with mathematical functions and operations;
- Science by learning how to gather, analyze and interpret observable data to make informed decisions and solve problems mathematically, using deductive and inductive reasoning to support a hypothesis, and how to differentiate between correlational and causal relationships.

Criteria for Determination

For nonpublic high schools subject to a Commissioner's determination, the Commissioner and the LSA making a recommendation to the Commissioner will take into consideration whether 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.



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Questions?