



TO: P-12 Education Committee

FROM: John D'Agati *John L. D'Agati*

SUBJECT: Substantial Equivalency of Instruction for Nonpublic Schools

DATE: January 30, 2020

AUTHORIZATION(S): *Sharon L. Tabor*

SUMMARY

Issue for Discussion

Staff will update the Board of Regents on the comments received on the proposed addition of Part 130 of the Regulations of the Commissioner of Education Relating to Substantially Equivalent Instruction for Nonpublic School Students and will provide an overview of next steps.

Reason(s) for Consideration

For information purposes.

Proposed Handling

The item be presented to the P-12 Education Committee for discussion at the February 2020 meeting.

Procedural History

The proposed amendments related to substantial equivalency of instruction for nonpublic schools were published in the State Register on July 3, 2019. Following the 60-day public comment period, the Department received over 140,000 comments on the proposed amendment.

Background Information

In 2015, the Department was made aware of concerns from the field that there was a need to provide updates to our long standing guidance regarding the statutory requirement set forth in Education Law §3204[2] which requires that "[i]nstruction 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” [emphasis added]. In working to address those concerns and update this guidance, the Department received feedback from various stakeholder groups in the public school and nonpublic school community and incorporated many of their suggestions into the revised guidance. On November 20, 2018, the Department released the updated guidance on substantial equivalency, including toolkits for public and nonpublic schools. From December 2018 through March 2019, an update to the toolkit was made to reflect additional feedback from the field and the Department conducted trainings across the state for public and nonpublic school leaders regarding the updated guidance.

In March 2019, the guidance was challenged in an Article 78 proceeding in the Albany County Supreme Court and in April 2019, the Court struck down the updated guidance holding that the issuance of the guidance violated the State Administrative Procedure Act (SAPA). In June 2019, the Department presented proposed regulations relating to the substantial equivalency requirement to the Board of Regents which were published in the State Register on July 3, 2019 and were presented to the field for public comment.

From July 3, 2019 to September 3, 2019 the Department received over 140,000 comments on the proposed regulations. Department staff have been working to review and assess these extensive comments in the months since. A summary of the comments and an overview of the common themes, concerns, and suggestions raised will be provided for review and discussion.

Related Regents Items

[December 2015: Overview of Nonpublic Schools in NYS](http://www.regents.nysed.gov/common/regents/files/Nonpublic%20Schools%20in%20NYS%20-%20An%20Overview.pdf)

(<http://www.regents.nysed.gov/common/regents/files/Nonpublic%20Schools%20in%20NYS%20-%20An%20Overview.pdf>)

[April 2018: Review of the 2018-19 Enacted Budget](https://www.regents.nysed.gov/common/regents/files/Review%20of%20the%202018-19%20Enacted%20Budget.pdf)

(<https://www.regents.nysed.gov/common/regents/files/Review%20of%20the%202018-19%20Enacted%20Budget.pdf>)

[State Aid Subcommittee Presentation](http://www.regents.nysed.gov/common/regents/files/SA%20-%20Overview%20of%20the%202018-19%20Enacted%20Budget.pdf)

(<http://www.regents.nysed.gov/common/regents/files/SA%20-%20Overview%20of%20the%202018-19%20Enacted%20Budget.pdf>)

[July 2018: Preliminary Overview of the 2018 Legislative Session](https://www.regents.nysed.gov/common/regents/files/Preliminary%20Overview%20of%20the%202018%20Legislative%20Session%20Memo.pdf)

(<https://www.regents.nysed.gov/common/regents/files/Preliminary%20Overview%20of%20the%202018%20Legislative%20Session%20Memo.pdf>)

[June 2019: Proposed Substantial Equivalence Regulation](http://www.regents.nysed.gov/common/regents/files/619p12d2.pdf)

(<http://www.regents.nysed.gov/common/regents/files/619p12d2.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

Based on the unprecedented amounts of comments received, Department staff recommends going back out for stakeholder feedback on the proposed amendments.