






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Elizabeth R. Berlin 

SUBJECT: Proposed Addition of Part 130 of the Regulations of the Commissioner of Education Relating to Substantially Equivalent Instruction for Nonpublic School Students

DATE: May 30, 2019

AUTHORIZATION(S):  

SUMMARY

Issue for Discussion

Should the Board of Regents adopt a new Part 130 of the Commissioner's Regulations to establish requirements related to substantial equivalency of instruction for nonpublic school students?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion at the June 2019 meeting of the Board of Regents. A copy of the proposed amendment is attached.

Procedural History

A Notice of Proposed Rulemaking will be published in the State Register on July 3, 2019. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In New York State, the Compulsory Education Law requires children aged 6 to 16 (or 17) to attend “upon full time instruction” (Education Law §3205[1], [3]). The purpose of the Compulsory Education Law is to ensure that children are not left in ignorance, that they receive, from one source or another, instruction that will prepare them for their place in society.

Since 1895, New York’s Compulsory Education Law has required that, if a child of compulsory attendance age “attend[s] upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides.” (Education Law of 1894, ch 671, §3).

Despite various statutory amendments and reenactments over the years, today, the Compulsory Education Law still uses largely the same language regarding substantial equivalency. Specifically, Education Law §3204(2) provides, “Instruction 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.”

Likewise, Education Law §3210(2) provides that a student who attends “elsewhere than at a public school . . . shall attend for at least as many hours, and within the hours specified therefor.” However, a student “may be permitted to attend for a shorter school day or for a shorter school year or for both, provided, in accordance with the regulations of the state education department, the instruction he receives has been approved by the school authorities as being substantially equivalent in amount and quality to that required by the provisions of [the Compulsory Education Law]”, which as noted above, require that substantial equivalence be determined as it relates to the instruction “given to the children of like age at the public school of the city or district in which such child resides.” (Education Law §§3210[2]; 3204[2]). The Education Law defines “school authorities” as the board of education or corresponding officers of a school district. (Education Law §2[12]).

In July 2015, it was widely reported in the media that a complaint had been filed with the New York City Department of Education (“NYCDOE”) by parents, former students and former teachers expressing concerns that 39 Yeshivas provided only limited secular education and were failing to meet the “substantial equivalence” standard mandated by state law. Thereafter, NYCDOE commenced an investigation. Based on the extensive media coverage of this issue, the Department received more and more inquiries and questions from both LSAs and nonpublic schools relating to the Department’s guidance on substantial equivalence.

A class action lawsuit was also filed in November 2015 against the Board of Regents, the Department, and the Commissioner, as well as the East Ramapo Central School District, its superintendent and four different Yeshiva schools and their principals/administrators in East Ramapo. In that case, the plaintiffs alleged, among other things, that, through the alleged action or inaction of all defendants, they were denied

their constitutional right to a “sound basic education” and to “substantially equivalent” instruction under Education Law §3204.

As a result of the events described above, at a December 2015 meeting, Department staff provided the P-12 Education Committee of the Board of Regents with an overview of nonpublic schools in New York State, which included the constitutional right of parents to send their students to nonpublic schools, the Compulsory Education Law and the right of students in nonpublic schools to be provided with substantially equivalent instruction.

In April 2016, the State’s Enacted Budget included funding for the creation of a new State Office of Religious and Independent Schools (“SORIS”) within the Department, which would be responsible for providing guidance and assistance to the nonpublic school community.

Based on the events described above, the volume of questions and concerns in the field, and the media reports, pursuant to the Commissioner’s statutory obligation under Education Law §305, the Commissioner charged SORIS with reviewing its existing guidance and providing recommendations on enhancements and/or updates to the guidance that could be made to assist the field in making these determinations based on current laws and regulations.

In April 2018, the Legislature amended the Education Law relating to the substantial equivalence determination for nonpublic schools that met the following criteria – namely, (1) they must be a non-profit corporation; (2) they must have a bilingual program; (3) elementary and middle schools must have an educational program that extends from no later than nine a.m. until no earlier than four p.m. for grades one through three, and no earlier than five-thirty p.m. for grades four through eight on the majority of weekdays; and (4) secondary schools must have been established for pupils in high school who have graduated from an elementary school that provides instruction as described in Education Law §3204 and have an educational program that extends from no later than nine a.m. until no earlier than six p.m. on the majority of weekdays. For these schools, the amendment: (i) shifts ultimate responsibility for making the final substantial equivalence determination to the Commissioner of Education; and (ii) requires the Commissioner to consider, without limitation, additional enumerated factors in making the final substantial equivalence determination (see Education Law §3204[2][ii]-[iii], [v]).

The Department undertook a consultative process to update its guidance on substantial equivalency for approximately two years. The Department issued updated substantial equivalency guidance on November 20, 2018. In March 2019, three separate lawsuits were filed in Albany County Supreme Court challenging various aspects of the updated guidance. The Department is issuing the proposed regulations in response an April 2019 ruling from the court which struck down the November 2018 guidance, asserting that the process detailed in State Administrative Procedure Act (“SAPA”) must be followed. In response to the court’s ruling, the Department has drafted the proposed regulations relating to substantial equivalence of instruction in nonpublic schools.

Proposed Amendment

The purpose of the proposed regulation is to provide guidance to local school authorities (LSAs) to assist them in fulfilling their responsibilities under Education Law §§3204, 3205, and 3210 in determining whether students in nonpublic schools are receiving instruction that is at least substantially equivalent to the instruction being provided to students of like age and attainments at the public schools. The intent of the substantial equivalency process is to ensure that all students receive the education to which they are entitled under the law. The substantial equivalency process must be a collaborative effort between LSAs and nonpublic schools.

The proposed regulation requires LSAs to 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).¹ Pursuant to Education Law §3204(2)(ii)-(iii), the Commissioner is responsible for making final determinations on substantial equivalency reviews for nonpublic schools that meet the enumerated statutory criteria (provided, however, that the Commissioner will also not be reviewing registered high schools or state-approved private special education schools or state-supported or state-operated schools for substantial equivalency because they are already subject to Department review).

For schools that meet the statutory criteria for a Commissioner's determination, LSAs must review such schools for substantial equivalency and forward a recommendation and supporting documentation to the Commissioner for his/her final determination.

The Department is proposing the following recommended timelines for substantial equivalency reviews, recommendations to the Commissioner and determinations:

- New nonpublic schools that open on or after the effective date of the proposed regulation must be reviewed within the first three years of when the nonpublic school commences instruction and regularly thereafter
- Existing nonpublic schools that are operating on the effective date of the proposed regulation must be reviewed by the end of the 2022-2023 school year or as soon as practicable thereafter and regularly thereafter.

The proposed regulation also recommends regular contact and communication between public and nonpublic schools, in an effort to keep each other informed of updated information, such as changes in leadership, their instructional program, school building location changes, grade levels served, and/or any other relevant information that the

¹ Registered high schools have been reviewed and visited by Department staff as part of a determination of whether the school may be authorized to administer Regents examinations and confer Regents diplomas and do not need to be reviewed for substantial equivalency of instruction. Registered nonpublic schools are deemed substantially equivalent by virtue of the required Departmental review. State-approved private special education schools, state-operated schools and state-supported schools established by the State Legislature pursuant to Education Law Articles 85, 87 or 88 are also subject to the Department's review and do not need to be reviewed for substantial equivalency.

LSAs may need to ensure that the students in these schools are receiving instruction that is at least substantially equivalent to that of public school students.

The proposed regulation states that substantial equivalency reviews and determinations should be conducted in a flexible and inclusive manner and should be the result of a collaboration between the LSA and the nonpublic school. Five core principles are essential to the review process:

- Objective – reviews should be based on objective criteria and focus on ensuring that nonpublic school students receive sufficient instruction in core subjects.
- Mindful – school leaders should respect parents’ or persons in a parental relationships’ right to choose among different school options for their children. Instructional programs in nonpublic schools do not need to be equal to or the same as that which is provided in their public school counterparts.
- Sensitive – LSAs should understand, among other things, that traditions and beliefs may drive the curriculum and be integrated into the delivery of instruction
- Respectful – all school leaders should be open-minded and respectful of each other’s communities, cultures, and needs.
- Consistent – consistent approaches to reviews and determinations across school districts will enable superintendents to be assured that resident students attending nonpublic schools in other districts are receiving a substantially equivalent education.

The proposed regulation sets forth a recommended procedure for substantial equivalency reviews. Prior to commencing a substantial equivalency review, the LSA, after consulting with the nonpublic school, shall determine whether the Commissioner is responsible for making the final determination pursuant to Education Law §3204(2)(ii) or (iii), or whether the LSA is responsible for making such final determination. LSAs and nonpublic schools may contact SORIS for technical assistance at any time to assist them in making this determination. Except for registered nonpublic high schools, state-approved private special education schools, state-operated schools and state supported schools, the superintendent or his/her designee (which may include a BOCES, where authorized under §1950 of the Education Law) should review all nonpublic schools in the LSA’s geographic boundaries, including nonpublic schools that meet the criteria for a Commissioner’s determination, and, in conducting such reviews, the LSA should use the criteria outlined in the proposed regulation. For schools that meet the criteria for a Commissioner’s final determination, the LSA conducts the review using the appropriate criteria and makes a recommendation to the Commissioner for his/her final determination.

The proposed regulation recommends that a substantial equivalency review should be conducted by a team of at least two individuals, including individuals with expertise in instruction and the ability to communicate well with the nonpublic school community. Prior to the review, the team should contact the nonpublic school to introduce themselves and their purpose and the team should review relevant documentation submitted by the nonpublic school, which may occur remotely or on site, and conduct a site visit.

The proposed regulation sets forth a recommended procedure for LSAs to render determinations regarding substantial equivalency, including written notification to nonpublic schools and notification to SORIS. If there are concerns about the substantial equivalency of the instruction provided at a nonpublic school, the proposed regulation recommends, among other things, that the LSA and nonpublic school work collaboratively to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified in the review. SORIS may be of assistance in this process. The proposed regulation indicates that services must continue to nonpublic school students during any period for attaining substantial equivalency.

If, after the consultation described above, the concerns identified in the LSA review and preliminary determination are addressed appropriately, the following steps should occur:

- the superintendent or his/her designee should inform the board of education in writing that the nonpublic school appears to be at least substantially equivalent. Although the board of education is not required to pass a formal resolution if it determines that the nonpublic school's program is substantially equivalent, this determination should be a matter of public record;
- the LSA should send written notification to the administration of the nonpublic school and provide a letter for the nonpublic school to distribute to the parents or persons in a parental relationship to the students who attend the nonpublic school;
- the LSA must notify SORIS of the positive determination in a form and manner prescribed by the Commissioner; and
- the superintendent or designee should share the positive finding with superintendents of school districts in which the nonpublic school's students reside.

If, after the consultation described above, the concerns cannot be remedied or if the nonpublic school does not make the changes necessary to achieve substantial equivalency, the following steps should occur:

- 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.
- The LSA must provide written notification to the administration of the nonpublic school and the parents or persons in parental relationship to students attending the nonpublic school of such determination and that the students will be considered truant if they continue to attend that school.
- The board must provide a reasonable timeframe, giving due consideration to the statutory and regulatory timeframes for services to nonpublic school students, for parents or persons in parental relationship to identify and enroll their children in a different appropriate educational setting, consistent with Education Law §3204.
- SORIS must be notified of the negative determination in a manner prescribed by the Commissioner.
- Services to the nonpublic school and students (e.g., textbooks, special education, transportation, etc.) must continue until the end of the reasonable timeframe.
- Student records shall be managed consistent with section 104.2 of this Title.

Additionally, the proposed regulation requires LSAs to report the following information to SORIS by September 1, 2020 and each September 1 thereafter:

- List of all nonpublic schools within the LSA's geographical boundaries
- List of all nonpublic schools in LSA's boundaries that are state-approved private special education schools, state-operated schools, and state-supported schools
- List of all the nonpublic schools in the LSA's boundaries that are registered high schools pursuant to 8 NYCRR §100.2(p)
- List of all the schools that are in the LSA's boundaries that are not state-approved private special education schools, state-supported schools, state-operated schools, or registered high schools and are subject to Commissioner's review pursuant to Education Law §3204(2)(ii)-(iii)
- List of the remaining nonpublic schools identified in the LSA's boundaries for which the LSA is responsible for making the final substantial equivalency determination

The proposed regulation also requires that, commencing on September 1, 2024 and each September 1 thereafter, LSAs must submit an attestation that they:

- Made a final substantial equivalency determination for each nonpublic school in their geographic area subject to their final determination, and
- Forwarded a substantial equivalency recommendation to the Commissioner for each nonpublic school in their geographic area that is subject to a final determination by the Commissioner

The proposed regulation includes procedures for the Commissioner's determination of substantial equivalency. For nonpublic schools for which the Commissioner is required to make a final determination, the LSA must conduct a review in accordance with the regulation and forward its recommendation regarding substantial equivalency and all relevant documentation to support its recommendation to the Commissioner. The LSA should retain a complete and accurate copy of its recommendation and related materials it submits to the Commissioner. The Commissioner will review the materials and recommendation submitted by the LSA. The Commissioner will provide the nonpublic school with an opportunity to present additional relevant materials and/or a written statement prior to rendering a determination. The proposed regulation sets forth procedures for when a school subject to a Commissioner's determination appears not to be substantially equivalent and for when the Commissioner renders a positive or negative substantial equivalency determination, such procedures are similar to those described above for LSAs to follow when making a final determination.

The proposed regulation provides that, when reviewing a nonpublic school for substantial equivalency, an LSA, and the Commissioner, when he/she is responsible for making the final determination, must consider the following criteria:

- Instruction given only by a competent teacher
- English is the language of instruction for common branch subjects
- Students who have limited English proficiency are provided with instructional programs enabling them to make progress toward English language proficiency
- The instructional program in the nonpublic school incorporates instruction in the following subjects:

- Grades 1-6: 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
- Grades 7-8: mathematics (two units of study);² English language arts (two units of study); social studies (two units of study); science (two units of study); career and technical education; physical education (similar courses of instruction to those required in public schools pursuant to 8 NYCRR 135.4); health education (one-half unit of study); visual arts (one-half unit of study); music (one-half unit of study); library and information skills (the equivalent of one period per week in grades 7 and 8); and career development and occupational studies
- Grades 9-12: 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)
- Similar courses of instruction to the courses of instruction required in public school in: patriotism and citizenship; history, meaning, significance, and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, and the Constitution of the State of New York and the amendments thereto; the development of character, citizenship, physical fitness, health, and the worthy use of leisure; highway safety and traffic regulation
- Instruction in health education relating to mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers; New York State history and civics; fire drills, fire and arson prevention, injury prevention and life safety education; hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator
- The additional enumerated factors in Education Law §3204 (ii) and (iii) for nonpublic schools subject to a Commissioner's determination:
 - for nonpublic elementary and middle schools subject to a Commissioner's final determination, whether the curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, taking into account the entirety of the curriculum, over the course of elementary and middle school; including instruction in: (1) 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; (2) mathematics that will prepare pupils to solve real world problems using both number sense and fluency with mathematical functions and operations; (3) history that will prepare pupils to interpret and analyze primary text to identify and explore important events in history, to construct written arguments using the supporting information they get from

² Unit of study means either at least 180 minutes of instruction per week throughout the school year or the equivalent, or the demonstration of an integrated curriculum that delivers comparable amounts of content by incorporating such subjects into the syllabus/syllabi of other courses; provided however that any units of study are cumulative for grades 7 and 8, and 9 through 12, respectively (i.e., the units of study for grades 7 and 8 must be met by the end of grade 8, and the units of study for grades 9 through 12 must be met by the end of grade 12; they are not annual requirements).

primary source material, demonstrate an understating of the role of geography and economics in the actions of world civilizations; (4) an understanding of civics and the responsibilities of citizens in world communities; (5) 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.

- for nonpublic high schools subject to a Commissioner's final determination, 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

The proposed regulation also sets forth the rights and responsibilities of parents and persons in a parental relationship to nonpublic school students, LSAs and nonpublic school leaders related to substantial equivalency determinations.

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

<http://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>

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the October 2019 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the October 2019 meeting, the proposed amendment will be effective on October 23, 2019.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 215, 305, 3204, 3205, 3210 and 3234.

A new Part 130 is added to the Regulations of the Commissioner of Education, as follows:

Part 130

Substantial Equivalency Reviews for Students Attending Nonpublic Schools

§130.1 Purpose.

The purpose of this Part is to provide guidance to local school authorities (LSAs) to assist them in fulfilling their responsibilities under Education Law §§3204, 3205, and 3210 in determining whether students in nonpublic schools are receiving instruction that is at least substantially equivalent to the instruction being provided to students of like age and attainments at the public schools. The intent of the substantial equivalency process is to ensure that all students receive the education to which they are entitled under the law. The substantial equivalency process must be a collaborative effort between LSAs and nonpublic schools.

§130.2 Definitions

As used in this Part:

(a) *Bilingual* means instruction in two or more languages.

(b) *Local school authority (LSA)* means the trustees or board of education of a school district; provided that in the case of the city school district of the City of New York, such term shall mean the Chancellor of the city school district acting in lieu of the board of education of such city school district to the extent authorized by article 52-A of the

Education Law and, with respect to community school districts and New York City superintendencies, such term shall mean the community superintendent or other superintendent of schools acting in lieu of the board of education to the extent authorized by article 52-A of the Education Law.

(c) *Nonpublic school* means a religious or independent school that provides elementary and/or secondary education (any grades 1 through 12) for the purpose of fulfilling the compulsory education requirements pursuant to Article 65 of the Education Law.

(d) *Nonprofit corporation* means a nonprofit corporation that is:

(1) an independent, not-for-profit school whose corporate purpose includes offering educational services to students in any grades 1 through 12; or

(2) a not-for-profit religious corporation organized under the Religious Corporations Law whose corporate purpose includes offering educational services to students in any grades 1 through 12.

(e) *Registered high school* means a nonpublic school serving any grades 9 through 12 that is voluntarily registered with the Board of Regents under section 100.2(p) of this Title.

(f) *State Office of Religious and Independent Schools (SORIS)* is the Department's office that provides support to nonpublic schools throughout the State.

(g) *Substantial equivalency of instruction* means an instructional program that is comparable to that offered in the public schools and is designed to facilitate students' academic progress as they move from grade to grade. A substantially equivalent instructional program need not have the same approaches and assessments that are used in the public schools. The instructional program may differ in method of delivery

and format. Substantially equivalent does not mean equal to or the same as that which is provided in the public school counterparts.

(h) Superintendent means the superintendent of schools or other chief school officer of a school district, and for the purpose of the city school district of the City of New York, superintendent shall mean the Chancellor of the city school district or his/her designee.

(i) Syllabus means a document stating the expected learning outcomes, including the goals, objectives, concepts, skills and understandings in a given subject.

(j) Unit of study means either at least 180 minutes of instruction per week throughout the school year or the equivalent, or the demonstration of an integrated curriculum that delivers comparable amounts of content by incorporating such subjects into the syllabus/syllabi of other courses; provided however that any units of study are cumulative for grades 7 and 8, and 9 through 12, respectively (i.e., the units of study for grades 7 and 8 must be met by the end of grade 8, and the units of study for grades 9 through 12 must be met by the end of grade 12; they are not annual requirements).

§130.3 Types of substantial equivalency reviews and determinations.

(a) LSAs must make substantial equivalency determinations for all nonpublic schools within their geographical boundaries, except as otherwise provided in subdivisions (b) through (d) of this section. For nonpublic schools subject to a Commissioner's substantial equivalency determination ("Commissioner's determination") pursuant to Education Law §3204(2)(ii)-(iii) and subdivision (d) of this section, LSAs must review such schools for substantial equivalency and forward a recommendation and supporting documentation to the Commissioner for his/her final determination.

(b) Registered high schools have been reviewed by Department staff as part of a determination of whether the school may be authorized to administer Regents examinations and confer Regents diplomas. Registered nonpublic schools are deemed substantially equivalent by virtue of required Departmental review and do not need to be reviewed for substantial equivalency pursuant to this Part. If, however, a nonpublic school with a registered high school also serves students in any grades 1 through 8, a substantial equivalency review must be conducted pursuant to this Part, unless those elementary and/or middle school grades are a State-approved private special education school or a State-operated or State-supported school pursuant to Article 85, 87 or 88 of the Education Law as described in subdivision (c) of this section.

(c) State-approved private special education schools and State-operated or State-supported schools established by the State Legislature pursuant to Article 85, 87 or 88 of the Education Law are deemed substantially equivalent by virtue of required Departmental review and do not need to be reviewed for substantial equivalency pursuant to this Part.

(d) Commissioner's determination. Pursuant to Education Law §3204(2)(ii)-(iii), the Commissioner is responsible for making final determinations on substantial equivalency reviews for the following types of nonpublic schools (provided, however, that the Commissioner will not be reviewing registered high schools or State-approved private special education schools or State-supported or State-operated schools as provided in subdivisions (b) and (c) of this section):

(1) elementary and middle schools that meet each of the following requirements:

(i) is a non-profit corporation,

(ii) has a bilingual program, and

(iii) has an educational program that extends from no later than 9:00 a.m. until no earlier than 4:00 p.m. for grades 1 through 3, and no earlier than 5:30 p.m. for grades 4 through 8, on the majority of weekdays.

(2) high schools that meet each of the following requirements:

(i) is established for pupils in high school who have graduated from an elementary school that provides instruction as described in Education Law §3204(2);

(ii) is a non-profit corporation;

(iii) has a bilingual program; and

(iv) has an educational program that extends from no later than 9:00 a.m. until no earlier than 6:00 p.m. on the majority of weekdays.

§130.4 Timeline for substantial equivalency review.

(a) Substantial equivalency reviews, recommendations and final determinations made pursuant to this Part should be completed within the following timeframes:

(1) New nonpublic schools. A new nonpublic school should notify the LSA in which it is located that it will be commencing instruction, the date on which it intends to commence instruction and how it intends to provide instruction that is substantially equivalent to that of students in the public schools. All recommendations and final substantial equivalency determinations should be completed for all new nonpublic schools that open on or after the effective date of this Part within three years of when the nonpublic school commences instruction for students in any grades 1-12 and regularly thereafter. If the new nonpublic school enrolls students from outside the public school district in which the school is located, the nonpublic school administrator should provide the superintendent of schools of each of the districts which have resident students

enrolled in the school with written notification that the new school is opening and a list of the names of students from the district who are enrolled in the school.

(2) Existing nonpublic schools. Due to the fact that the Department has been advised that substantial equivalency reviews have not occurred consistently statewide, in accordance with the Department's authority set forth in Education Law §3234 to enforce the compulsory education laws (Article 65 of the Education Law), LSAs should make required substantial equivalency determinations subject to LSA review, and any recommendations for schools subject to a Commissioner's determination pursuant to section 130.3 of this Part, for all nonpublic schools in its geographic boundaries that are operating on the effective date of this Part by the end of the 2022-2023 school year or as soon as practicable thereafter and regularly thereafter.

(b) LSAs should have regular contact and communication with all nonpublic schools within their geographical boundaries in an effort to keep each other informed of updated information, such as changes in leadership, their instructional program, school building location changes, grade levels served, and/or any other relevant information that the LSAs may need to ensure that the students in these schools are receiving instruction that is at least substantially equivalent to that of public school students.

(c) If, at any time, a concern arises regarding the substantial equivalency of instruction at a nonpublic school subject to an LSA's review under section 130.3 of this Part, the LSA shall promptly conduct an investigation into the complaint to ensure that the students of the nonpublic school are receiving substantially equivalent instruction.

§130.5 Guiding principles for substantial equivalency reviews. Substantial equivalency reviews and determinations should be conducted in a flexible and inclusive manner and

should be the result of a collaboration between the LSA and the nonpublic school. The following core principles are essential to the review process:

(a) Objective: Reviews and discussions should be based on objective criteria, such as school and course schedules, textbooks, and sample lesson plans. Reviews should focus on ensuring that students in the nonpublic school receive sufficient instruction in core subjects.

(b) Mindful: All school leaders should recognize and respect parents' or persons in a parental relationship's legal right to choose among public, religious, and independent school options for their children. Reviews should focus on ensuring that students have the opportunity to acquire core skills and to make academic progress, not on demonstrating a perfect correspondence between public and nonpublic schools. Instructional programs in nonpublic schools do not need to be equal to or the same as that which is provided in their public school counterparts.

(c) Sensitive: LSA representatives should understand that nonpublic schools often have different settings, calendars, assessments, and instructional methods from public schools. LSA representatives should not assume that nonpublic schools have the same resources or programs as the public school district. The LSA should understand that, in some cases, traditions and beliefs – religious or otherwise – will drive the curriculum and will be integrated into the delivery of instruction.

(d) Respectful: Public school leaders and nonpublic school leaders should be open-minded and respectful of each other's communities, cultures, and needs.

(e) Consistent: Public school leaders should work with their colleagues in other public school districts and BOCES to develop consistent approaches to review and make determinations across local school districts. This will enable superintendents to be

assured that resident students attending nonpublic schools in other districts are receiving a substantially equivalent education.

§130.6 Substantial equivalency reviews.

(a) Prior to commencing a substantial equivalency review, the LSA, after consulting with the nonpublic school, shall determine whether the Commissioner is responsible for making the final determination pursuant to Education Law §3204(2)(ii) or (iii), or whether the LSA is responsible for making such final determination. LSAs and nonpublic schools may contact SORIS for technical assistance at any time to assist them in making this determination.

(b) Except for the schools described in subdivisions (b) and (c) of section 130.3 of this Part, the superintendent or his/her designee (which may include a BOCES, where authorized under §1950 of the Education Law) should review all nonpublic schools in the LSA's geographic boundaries, including nonpublic schools that meet the criteria for a Commissioner's determination, and, in conducting such reviews, the LSA should be mindful of the guiding principles set forth in section 130.5 of this Part and use the criteria outlined in section 130.10 of this Part. For schools that meet the criteria for a Commissioner's final determination, the LSA must conduct the review and make a recommendation on substantial equivalency to the Commissioner for his/her final determination as set forth in sections 130.3(d) and 130.9 of this Part.

(c) A substantial equivalency review should be conducted by a team of at least two individuals, including individuals with expertise in instruction and the ability to communicate well with the nonpublic school community. Prior to the review, the team should contact the nonpublic school to introduce themselves and their purpose and the

team should review relevant documentation submitted by the nonpublic school, which may occur remotely or on site, and conduct a site visit. The criteria for the review is outlined in section 130.10 of this Part.

§130.7 LSA Determinations.

(a) For nonpublic schools where the LSA is responsible for making the final determination, if, following its review, the instruction provided by the nonpublic school appears to be at least substantially equivalent, the LSA should render a positive substantial equivalency determination in the following manner:

(1) the superintendent or his/her designee should inform the board of education in writing that the instruction provided by the nonpublic school appears to be at least substantially equivalent. Although the board of education is not required to pass a formal resolution if it determines that the nonpublic school's program is substantially equivalent, this determination should be a matter of public record;

(2) the LSA should send written notification to the administration of the nonpublic school and provide a letter for the nonpublic school to distribute to the parents or persons in a parental relationship to the students who attend the nonpublic school;

(3) the LSA must notify SORIS of the positive determination in a form and manner prescribed by the Commissioner; and

(4) the superintendent or designee should share the positive finding with superintendents of school districts in which the nonpublic school's students reside.

(b) If, following its review, LSA officials have concerns about the substantial equivalence of the instruction provided by the nonpublic school, the LSA must:

(1) inform the nonpublic school's administrators of the concerns and the LSA's preliminary determination;

(2) notify SORIS in a manner prescribed by the Commissioner;

(3) work collaboratively with the nonpublic school to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified in the review. SORIS may be of assistance in this process;

(4) provide appropriate technical assistance, particularly regarding the availability of any resources for professional development that may support the nonpublic school in attaining the shared goal of substantial equivalence; and

(5) continue services (e.g. textbooks, special education, transportation, etc.) to the nonpublic school and students during the period covered by the collaboratively developed timeline.

(c) If, after the consultation described in paragraph (b) of this section, the concerns identified in the LSA review and preliminary determination are addressed appropriately, the LSA should follow the procedures for a positive determination as outlined in paragraph (a) of this section.

(d) If, after the consultation described in paragraph (b) of this section, the concerns cannot be remedied or if the nonpublic school does not make the changes necessary to achieve substantial equivalence, the LSA may render a negative substantial equivalency determination in the following manner:

(1) the superintendent or designee should notify the board of education that the nonpublic school does not appear to be substantially equivalent, and the board of

education will vote and make a final determination in a regularly scheduled, public board meeting as described below;

(2) the LSA should notify nonpublic school administration of the date that the board of education will consider the matter of substantial equivalency;

(3) 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 the determination; and

(4) the LSA must notify SORIS in a manner prescribed by the Commissioner;

(e) Board of education determination. After careful consideration of the information provided by the nonpublic school during and after both the initial review and, if applicable, the collaborative improvement process, the board of education should vote publicly upon its determination as follows:

(1) if the board of education determines that the nonpublic school is providing substantially equivalent instruction, the LSA should go through the process described in paragraph (a) of this section.

(2) if the board of education decides that the school is not providing substantially equivalent instruction, then:

(i) The LSA must provide written notification to the administration of the nonpublic school and the parents or persons in parental relationship to students attending the nonpublic school of such determination. The board of education must provide a reasonable timeframe, giving due consideration to the statutory and regulatory timeframes for services to nonpublic school students, for parents or persons in parental relationship to identify and enroll their children in a different appropriate educational setting, consistent with Education Law §3204. Should the parents or persons in parental

relationship to the students fail to enroll their children in a different, appropriate educational setting, the students will be considered truant;

(ii) SORIS must be notified of the negative determination in a manner prescribed by the Commissioner.

(iii) Legally mandated services to the nonpublic school and students (e.g. textbooks, special education, transportation, etc.) must continue until the end of the reasonable timeframe provided to the parents or personal in parental relationship to the student as described in subparagraph (i) of this paragraph.

(iv) Student records shall be managed consistent with section 104.2 of this Title.

130.8 Reporting Requirement.

(a) LSAs must file a report with the following information to SORIS in a form acceptable to the Department by September 1, 2020 and each September 1 thereafter:

(1) a list of all nonpublic schools located within the LSA's geographical boundaries;

(2) a list of all the nonpublic schools identified in paragraph (1) of this subdivision that are State-approved private special education schools and State-supported or State-operated schools, as described in section 130.3(c) of this Part, that do not need to be reviewed for substantial equivalency pursuant to this Part;

(3) a list of all the nonpublic schools identified in paragraph (1) of this subdivision that are registered high schools pursuant to section 100.2(p) of this Title and as further described in section 130.3(b) of this Part;

(4) a list of the schools identified in paragraph (1) of this subdivision that are not otherwise identified in paragraphs (2) and (3) of this subdivision and are subject to

Commissioner's review pursuant to Education Law §3204(2)(ii)-(iii) and subdivision (d) of section 130.3 of this Part; and

(5) a list of the remaining schools identified in paragraph (1) of this subdivision that are not identified in paragraphs (2), (3) and (4) of this subdivision for which the LSA is responsible for making the final substantial equivalency determination.

(b) Commencing September 1, 2024 and each September 1 thereafter, LSAs must also submit an attestation that indicates whether they (i) have made a final substantial equivalency determination for each nonpublic school in their geographic area that is subject to their final determination as listed in paragraph (5) of subdivision (a) of this section and the date on which such determination was made, and (ii) forwarded a substantial equivalency recommendation to the Commissioner for each nonpublic school in their geographic area that is subject to a final determination by the Commissioner, as identified in paragraph (4) of subdivision (a) of this section and the date on which such recommendation was made.

§130.9 Commissioner's Determination.

(a) For nonpublic schools for which the Commissioner is required to make the final determination pursuant to Education Law §3204(2)(ii)-(iii) and subdivision (d) of section 130.3 of this Part, the LSA must conduct a review in accordance with this Part and forward its recommendation regarding substantial equivalency and all relevant documentation to support its recommendation to the Commissioner. The LSA should retain a complete and accurate copy of its recommendation and related materials it submitted to the Commissioner. The Commissioner will review the materials and recommendation submitted by the LSA prior to making his/her final determination.

(b) The Commissioner will provide the nonpublic school with an opportunity to present additional relevant materials and/or a written statement to the Commissioner prior to rendering his/her final determination.

(c) Following his/her review of the LSA's recommendation and the documentation submitted, if the Commissioner determines that the nonpublic school is providing substantially equivalent instruction, the Commissioner will send written notification to the administration of the nonpublic school and provide a letter for the nonpublic school to distribute to the parents or persons in a parental relationship to the students who attend the nonpublic school. The Commissioner will share the positive finding with superintendents of school districts in which the nonpublic school's students reside.

(d) If, based on the LSA recommendation and the documentation submitted, the Commissioner has concerns about the substantial equivalence of the instruction provided by the nonpublic school, then:

(1) the Commissioner will inform the nonpublic school's administrators and the LSA of the concerns identified;

(2) the Commissioner will ask the LSA to work collaboratively with the nonpublic school to develop a clear plan and timeline, including benchmarks and targets, for attaining substantial equivalency in an amount of time that is reasonable given the concerns identified in the review. SORIS staff may be of assistance in this process;

(3) the LSA should submit such plan and timeline for approval, and the Commissioner will review and approve the plan and timeline or provide the LSA and nonpublic school with guidance on reaching a satisfactory plan and timeline;

(4) the LSA should provide appropriate technical assistance, particularly regarding the availability of any resources for professional development that may support the nonpublic school in attaining the shared goal of substantial equivalence;

(5) during the period covered by the collaboratively developed plan and timeline, all services the LSA is required to provide to the nonpublic school and its students shall be continued (e.g. textbooks, special education, transportation, etc.);

(6) if, after the consultation described in paragraphs (2) to (4) of this subdivision, the nonpublic school addresses the concerns appropriately, the LSA should make a recommendation to the Commissioner for a positive substantial equivalency determination and provide supporting documentation. The Commissioner will review the materials and recommendation submitted by the LSA and provide the nonpublic school with an opportunity to present additional relevant materials and/or a written statement to the Commissioner prior to rendering determination;

(7) if, after the consultation described in paragraphs (2) to (4) of this subdivision, the concerns cannot be remedied or if the nonpublic school does not make the changes necessary to achieve substantial equivalence, the LSA should notify the Commissioner, and the Commissioner will review any materials submitted. The Commissioner may request additional information or materials prior to making a determination, and the Commissioner or a designee may meet with the nonpublic school;

(8) if the Commissioner makes a positive substantial equivalency determination based on the process described above, the Commissioner will follow the procedures outlined in paragraph (c) of this section;

(9) if the Commissioner makes a determination that the school does not provide substantially equivalent instruction, then:

(i) the Commissioner will provide a letter to the nonpublic school and parents or persons in parental relationship to students attending the nonpublic school of such determination. The Commissioner will provide a reasonable timeframe, giving due consideration to the statutory and regulatory timeframes for services to nonpublic school students, for parents or persons in parental relationship to identify and enroll their children in a different, appropriate educational setting, consistent with Education Law §3204. Should the parents or persons in parental relationship to the students fail to enroll their children in a different, appropriate educational setting, the students will be considered truant;

(ii) Legally mandated services to the nonpublic school and students (e.g. textbooks, special education, transportation, etc.) must continue during the reasonable timeframe; and

(iii) student records shall be managed consistent with section 104.2 of this Title.

(e) Appeals. Persons considering themselves aggrieved by an LSA determination may appeal to the Commissioner pursuant to Education Law §310. Persons considering themselves aggrieved by a Commissioner's determination may challenge it in a proceeding under Article 78 of the Civil Practice Laws and Rules.

(f) If, at any time, a concern arises regarding the substantial equivalency of instruction at a nonpublic school subject to the Commissioner's determination, the Commissioner or his/her designee shall conduct an investigation into the complaint to ensure that the students of the nonpublic school are receiving substantially equivalent instruction and may request that an LSA conduct a substantial equivalency review and provide a recommendation to the Commissioner on whether the nonpublic school is providing substantially equivalent instruction.

§130.10 Criteria for substantial equivalency reviews. When reviewing a nonpublic school for substantial equivalency, an LSA, and the Commissioner, when he/she is responsible for making the final determination, must consider:

(a) whether instruction is given only by a competent teacher as required by Education Law §3204(2)(i) (e.g. instructional staff employed by the school have qualifications consistent with the school's policy for teacher hiring standards and qualifications). The law does not require nonpublic school teachers to be certified;

(b) whether English is the language of instruction for common branch subjects as required by Education Law §3204;

(c) whether students who have limited English proficiency have been provided with instructional programs enabling them to make progress toward English language proficiency;

(d) If a nonpublic school has been accredited within the last five years, the LSA representatives should take the accreditation materials into account as part of the substantial equivalency review process

(e) whether the instructional program in the nonpublic school incorporates instruction in the following subjects:

(1) during grades 1 through 6, mathematics, including arithmetic, science, and technology (concepts of science, mathematics, social science, and language arts in a hands-on, systems-based approach to problem solving that guides students in the understanding, design, and development of systems, devices, and products to serve human needs and wants); English language arts, including reading, writing, listening, and speaking; social studies, including geography and United States history; the arts; career

development and occupational studies; health education, physical education, and family and consumer sciences. Instruction in these subjects may be integrated or incorporated into the syllabus or syllabi of other courses;

(2) during grades 7 and 8, 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, wherein the unit of study requirement may be initiated in grade 5 (one and three-fourths units of study); physical education (similar courses of instruction to those required in public schools pursuant to section 135.4 of this Title); health education (one-half unit of study); visual arts (one-half unit of study); music (one-half unit of study); library and information skills, which may be incorporated or integrated into any other subjects (the equivalent of one period per week in grades 7 and 8); career development and occupational studies, which may be incorporated or integrated into any other subjects;

(3) during grades 9 through 12, instruction in 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); the arts (one unit of study);

(f) whether the nonpublic school meets other statutory instructional requirements, including:

(1) for all students over eight years of age, a similar course of instruction to the course of instruction in patriotism and citizenship required in public schools pursuant to Education Law §801(1) and section 100.2(c)(1) of this Title;

(2) for all students grades 8 and higher, a similar course of instruction to the course of instruction in the history, meaning, significance, and effect of the provisions of the

Constitution of the United States and the amendments thereto, the Declaration of Independence, and the Constitution of the State of New York and the amendments thereto required in public schools pursuant to Education Law §801(2) and section 100.2(c)(3) of this Title;

(3) for all students over the age of eight, a similar course of instruction to the course of instruction in the development of character, citizenship, physical fitness, health, and the worthy use of leisure required in public schools pursuant to Education Law §803(4) and section 100.2(c)(4) of this Title. Pursuant to Education Law§3204(5), a student may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of the student’s parents or guardian; provided that such conflict must be certified by a proper representative of their religion as defined by Religious Corporations Law §2;

(4) for all students, instruction in health education relating to mental health, alcohol, drug, and tobacco abuse and the prevention and detection of certain cancers as required by Education Law §§804, 3204(5). Pursuant to Education Law§3204(5), a student may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of the student’s parents or guardian; provided that such conflict must be certified by a proper representative of their religion as defined by Religious Corporations Law §2.

(5) for all students, a similar course of instruction to the course of instruction in highway safety and traffic regulation required in public schools by Education Law §806 and section 100.2(c)(5) of this Title;

(6) for all students in grades 1 through 8, instruction in New York State history and civics as required by Education Law §3204(3) and section 100.2(c)(7) of this Title;

(7) for all students, instruction in fire drills, fire and arson prevention, injury prevention and life safety education pursuant to Education Law §§807, 808 and section 100.2(c)(6) of this Title;

(8) for students in senior high school, instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator pursuant to Education Law §305(52) and section 100.2(c)(11) of this Title;

(g) Pursuant to Education Law §3204 for nonpublic elementary and middle schools subject to a Commissioner's final determination pursuant to Education Law §3204(2)(ii), 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 in the school's students, taking into account the entirety of the curriculum, over the course of elementary and middle school; including instruction in:

(1) 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;

(2) mathematics that will prepare pupils to solve real world problems using both number sense and fluency with mathematical functions and operations;

(3) history that will prepare pupils to interpret and analyze primary text to identify and explore important events in history, to construct written arguments using the supporting information they get from primary source material, demonstrate an understating of the role of geography and economics in the actions of world civilizations;

(4) an understanding of civics and the responsibilities of citizens in world communities;

(5) 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.

(g) For nonpublic high schools that meet the criteria for a Commissioner's final determination pursuant to Education Law §3204(2)(iii), 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.

§130.11 Responsibilities and rights.

(a) Responsibilities and rights of parents or persons in a parental relationship to nonpublic school students:

(1) if parents or persons in a parental relationship disagree with a final determination of the LSA, they may file an appeal to the Commissioner pursuant to Education Law §310 and Parts 275 and 276 of this Title within 30 days of the board's decision.

(2) if parents or persons in a parental relationship disagree with a Commissioner's determination, they may challenge such determination in a proceeding pursuant to article 78 of the Civil Practice Law and Rules.

(3) if parents or persons in a parental relationship are notified that the nonpublic school their children are attending is not providing substantially equivalent instruction,

they must transfer their children to another appropriate educational setting pursuant to Education Law §§3204 and 3205.

(b) Responsibilities of the LSA and superintendent or designee. LSAs must:

(1) maintain regular contact and regular substantial equivalency reviews and updates for the nonpublic schools within their boundaries and such reviews should meet the core principles of objectivity, mindfulness, sensitivity, respect, and consistency;

(2) report that a review has been conducted as well as the outcome of the review in a manner prescribed by the Commissioner;

(3) document and retain a finding of substantial equivalence and provide written confirmation to the religious or independent school;

(4) if a question or concern arises about the substantial equivalency of instruction in an established school, inform the nonpublic school, provide the nonpublic school the basis of the question or concern in writing, and contact SORIS. The LSA should conduct an adequate investigation into the complaint to ensure that the students of the nonpublic school are receiving substantially equivalent instruction; and

(5) when contacted by a leader of a new nonpublic school in the school district, meet with the nonpublic school leader to build a productive working relationship and develop a timeline for review of substantial equivalency. To the extent possible, such review should begin prior to the opening of school and should be completed as soon as practicable thereafter but no later than three years after the nonpublic school is operating.

(c) Responsibilities of nonpublic school leaders. Nonpublic school leaders must:

(1) maintain a complete and accurate archive copy that includes detailed records of substantial equivalency determinations. The nonpublic school shall maintain such records in the same manner as required for pupil academic records pursuant to section

104.2 of this Title to enable nonpublic school students to obtain records demonstrating that the school they attended provided substantially equivalent instruction;

(2) provide general information including the number of students, by district of residence, who attend the nonpublic school; a list of grade levels and the total enrollment at each grade level; academic calendars; and daily attendance records per section 104.1 of this Title to the LSA;

(3) communicate any relevant changes in their instructional programming or other aspects that may have a bearing on substantial equivalence to the LSA superintendent or nonpublic school liaison (e.g., changes in leadership, school building locations, grade levels served, etc.);

(4) when planning and opening a new school, provide written notification to the LSA in which the nonpublic school will be located;

(5) communicate with the LSA upon establishment of a nonpublic school or as soon as possible if not done previously; and

(6) prepare, compile, and provide for review documentation needed for substantial equivalency determinations.