

SUBSTANTIAL EQUIVALENCY UPDATE

July 2020 Regents Meeting

- ▶ Education Law §3204(2) states 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].

“AT LEAST SUBSTANTIALLY EQUIVALENT”

- ▶ In April 2018, the Legislature amended the Education Law relating to the substantial equivalence determination for nonpublic schools that meet 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 9 a.m. until no earlier than 4 p.m. for grades 1-3, and no earlier than 5:30 p.m. for grades 4-8 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 9 a.m. until no earlier than 6 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]).

2018 AMENDMENT

- ▶ In order to implement the 2018 amendment and address concerns from the field that updates were needed to our longstanding guidance on substantial equivalency, the Department released updated guidance on November 20, 2018, including toolkits for nonpublic and public schools.
- ▶ From December 2018 through March 2019, the Department conducted trainings across the State for public and nonpublic school leaders.

UPDATED GUIDANCE AND TRAINING



- ▶ In April 2019, the Albany County Supreme Court annulled the updated guidance on the grounds that the guidance was a “rule” and needed to be formally promulgated in accordance with the State Administrative Procedures Act.

LEGAL CHALLENGE TO GUIDANCE

- ▶ Thereafter, the Department proposed regulations which were discussed at the June 2019 Regents meeting.
- ▶ The Regents Item including the text of the proposed regulation: <https://www.regents.nysed.gov/common/regents/files/619p12d2.pdf>
- ▶ A Notice of Proposed Rule Making was published in the State Register on July 3, 2019 for a 60-day public comment period.
- ▶ The Department received over 140,000 comments on the proposed regulations. An overview of these comments was presented to the Board of Regents at the February 2020 meeting.

PROPOSED REGULATION

- ▶ Given the wealth of comments and varying views expressed, the Department recommended to the Board of Regents at its February 2020 meeting that we re-engage stakeholders for feedback on the proposed amendments toward the common goal of ensuring all children receive the instruction to which they are entitled.

STAKEHOLDER FEEDBACK NEEDED

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- ▶ The Regents concurred with the staff recommendation that the Department undertake a stakeholder engagement process that would take into account desired outcomes, means of measuring those outcomes and the need to respect the diversity of the communities served within the broader religious and independent school community.

REGENTS DIRECT AN ENGAGEMENT PROCESS

- ▶ Due to the COVID -19 crisis and the Executive Orders closing schools across the State for the remainder of the 2019-2020 school year and the uncertainty surrounding the reopening of schools for the 2020-2021 school years, this consultation process was delayed.

CONSULTATION PROCESS

- ▶ Under the State Administrative Procedures Act, a notice of proposed rule making expires within 365 days after its publication of in the State Register unless it is revised within 90 days before its expiration date.
- ▶ The proposed regulation was initially set to expire July 1, 2020, which is 365 days after its publication in the State Register.
- ▶ However, due to COVID-19 crisis, Executive Order 202.15, which was subsequently extended by Executive Orders 202.29 and 202.39, the expiration dates of certain proposed rule makings are extended until October 5, 2020.

EXECUTIVE ORDER EXTENSION OF PROPOSED RULE MAKINGS' EXPIRATION DATES

- ▶ If the Department revises the proposed rule making within 90 days of its expiration, this will extend the expiration of the proposed rule for an additional 90 days. Therefore, if the Department revises the proposed rule before October 5, 2020, its current expiration date, the new expiration date would be January 2, 2021.
- ▶ Thus, if the stakeholder engagement process indicates that the proposed rule should be amended, the expiration date can be extended.

EXTENSION OF EXPIRATION DATE
POSSIBLE IF AMENDED

- ▶ With the assistance of the Region 2 Comprehensive Center, led by West Ed, the Department recommends establishing 6 regional meetings across the State. The regions would be determined based on the concentration of religious and independent schools within the local communities.
- ▶ The Department would engage nonpublic school leaders and educators across the State in both the independent and religious school sectors as well as local school authorities.
- ▶ The Department recognizes that religious and independent schools will have different ways of delivering substantially equivalent instruction to their students, and that a flexible and inclusive approach with great collaboration between the local school authorities and non-public schools is necessary.
- ▶ In New York, our diversity is our strength, and the process we undertake should respect this.

RECOMMENDATIONS FOR CONSULTATION PROCESS

- ▶ Thus, the Department recommends seeking input from stakeholders on the following issues:
 - ▶ Core Principles that should guide the review process
 - ▶ What does “substantial equivalence” mean? This could require a statutory change.
 - ▶ Procedures and timelines for substantial equivalency reviews
 - ▶ Reporting requirements
 - ▶ How can the Department ensure that all children are prepared for participation in society while, at the same time, respect families’ rights to raise their children within their community’s values?

TOPICS FOR ENGAGEMENT

- ▶ Practically speaking, the Department would seek stakeholder input on the criteria to be used for substantial equivalency determinations, including but not limited to:
 - ▶ Teacher competency
 - ▶ Language of instruction
 - ▶ Limited English proficiency
 - ▶ Subjects and course requirements to be taught at each grade level
 - ▶ Unit of study requirements
 - ▶ Whether alternative mechanisms can be used to determine substantial equivalency (e.g. Registered high schools, accreditation, standardized test results, graduation and job placement rates, etc.)

TOPICS FOR ENGAGEMENT

QUESTIONS?

