

Preliminary Overview of Comments Received on the Proposed Regulation Regarding Substantial Equivalency of Instruction in Nonpublic Schools

February 2020 Regents Meeting

“At least
substantially
equivalent”

- 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].

2018 Amendment

- 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]).

140,000
Comments
Received on
Proposed
Regulation

- Regents Item including text of the proposed regulation: <https://www.regents.nysed.gov/common/regents/files/619p12d2.pdf>
- The Department received and is in the process of reviewing over 140,000 comments on the proposed regulation.
- This presentation reflects a general overview of some of the most common themes that have emerged from the comments reviewed to date.

Overview of Substantial Equivalency Comments: Rights

Rights: Many commenters stated that the proposed regulation infringes on certain rights of families. For example, many commenters expressed the following about the proposed regulations:

- **Parental Rights:** Violates a parent's right to direct the education of their children, including moral and religious teachings.
- **Constitutional Rights:** Violates the right to free exercise of religion. It also violates the establishment clause for a governmental entity to examine religious studies.
- **Government overreach:** The government should not interfere with nonpublic schools, which have a long record of achievement.

Overview of Substantial Equivalency Comments: Religious Beliefs

- **Secular Education:** Some commenters stated that they have little interest in increasing the secular education in nonpublic schools, particularly at the expense of religious education. It is against religious beliefs and certain subjects are not allowed to be taught.
- **Anti-religious:** Others stated that the proposed regulation is an attack on religious traditions and education that have existed for thousands of years.
- **Leaving the State:** Some commenters stated that the regulation will force many families to seek educational opportunities for their children in other states or countries to ensure that their children are provided with the religious education they wish to provide.
- **Enforcement problems:** People will refuse to comply with the proposed regulation, particularly where it goes against their religious beliefs.

Overview of Substantial Equivalency Comments: Risks to Nonpublic Schools

Risks to religious and independent school sector:

Some commenters expressed concerns that the proposed regulations and process posed a risk to the viability of the private school sector.

- **Too many requirements:** Commenters received great educations at nonpublic schools and are successful professionals. Nonpublic schools do not need to teach all of the subjects required by the proposed regulation. Private schools have innovative curriculum that is different than public schools. Forcing private schools to teach all of the subjects in the proposed regulation will detract from their ability to offer unique educational experiences.
- **Cost:** The proposed regulation results in additional costs for nonpublic schools – the State should cover these costs in mandated services aid. The proposed regulation is an unfunded mandate on public schools, particularly because it requires a more in-depth review than the prior guidance.

Overview of Substantial Equivalency Comments: Risks to Nonpublic Schools Continued

Risks to religious and independent school sector:

Some commenters addressed concerns that the proposed regulations and process posed a risk to the health of the private school sector.

- **Conflict between LSA and Nonpublic School:** The proposed regulation will cause increased tensions between the LSA and nonpublic school, impairing already tenuous working relationships and hurting students. LSAs and nonpublic schools compete for students, creating a conflict of interest in reviewers.
- **Negative Effects on Nonpublic Schools:** The proposed regulation could negatively affect nonpublic schools, including enrollment and/or the viability of a nonpublic school if it received a negative review or other negative attention.

Overview of Substantial Equivalency Comments: Process

Process: Many commenters expressed concern about the process outlined in the proposed regulations.

- **Accredited schools should be exempt:** It is unnecessary to spend time and money reviewing accredited schools, and accredited schools should be exempted from substantial equivalency reviews because they already go through a rigorous accreditation review.
- **Other alternatives to reviews:** Some commenters suggested to extend Board of Regents registration to all grades, review only underperforming schools, or that a panel could conduct reviews instead of the LSA.
- **Variability of Evaluations:** The process to evaluate each nonpublic school, and the evaluations themselves, will look different as a result of the LSA that is conducting the evaluation.
- **Clarity:** The proposed regulation lacks clear, objective, and measurable standards or language.

Overview of Substantial Equivalency Comments: Privacy and Proprietary Information

- Information provided during the review would be discoverable through Freedom of Information Law (FOIL) requests, and the regulations will expose children's private information and threaten their security.
- Proprietary information made available during a review may be susceptible to public exposure, which would harm nonpublic schools.

Overview of Substantial Equivalency Comments: Unnecessary Regulation

- **Regulation is Unnecessary:** Some commenters expressed that nonpublic schools outperform public schools, have superior curriculum, and better results for graduates. Parents choose nonpublic schools and pay tuition; if the nonpublic school underperforms, parents will pull their children out. Nonpublic school students do not have the same problems as public school students with crime, homelessness and addiction.

Overview of Substantial Equivalency Comments: Responsibility

- **Focus of Responsibility:**
 - Some commenters expressed that LSAs do not have legal authority over nonpublic schools and are unqualified to review nonpublic schools. The responsibility to review nonpublic schools lies with the Department and the Board of Regents. It is inappropriate for a nonpublic school with a charter issued by the Board of Regents to be evaluated by an LSA.
 - The proposed regulation imposes additional costs on the Department that it is unprepared to take on.

Overview of Substantial Equivalency Comments: Supportive

- **Supports Proposed Regulations:** Some commenters expressed support of the proposed regulations.
 - Regulations are necessary to ensure children receive an adequate education, because education is a human right.
 - Secular education is important in a culturally diverse society.
 - Other commenters stated that they themselves did not receive an adequate education and **certain** religious schools fail to provide secular education to male students.

Next Steps

- The Department will continue to review and assess the public comments received.
- Given the wealth of comments and varying views expressed, the Department will re-engage stakeholders for further discussion on the next steps toward the common goal of ensuring all children receive the instruction to which they are entitled.

Questions?