

Substantial Equivalency Implementation Guidance

New York State Education Department

**OFFICE OF RELIGIOUS AND INDEPENDENT SCHOOL
SUPPORT**

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Contents

Contents..... 2

Introduction..... 3

PART I: Terminology..... 5

PART II: Substantial Equivalency Pathways..... 7

Pathway 1: Registered High Schools..... 8

Pathway 2: State Approved Private Special Education Schools, State Operator or State Supported School..... 10

Pathway 3: Accreditation..... 11

Pathway 4: International Baccalaureate Programs..... 13

Pathway 5: Federally Approved Schools..... 14

Pathway 6: Assessments..... 15

Pathway 7: Local Reviews..... 19

Criteria for Substantial Equivalency Reviews..... 19

Substantial Equivalency Review & Determination Process..... 23

PART III: Timelines..... 25

PART IV: Safeguards..... 27

Introduction

Like many states, New York has a compulsory education law which requires that children aged 6-16 (or 17 in some localities) receive instruction. While most students receive this instruction in public schools, families have a constitutional right to select other options, such as a religious or independent school. Article 65 of the New York State Education Law requires that wherever school-aged children receive instruction, that instruction must provide them with the opportunity to acquire the essential basic knowledge and skills necessary to function as citizens and members of society. It places the primary responsibility for confirming that students attending nonpublic schools are receiving such instruction upon local school authorities. Students in nonpublic schools are entitled to receive instruction that is at least substantially equivalent to the instruction provided in the public schools. It need not be identical to what is provided in the public schools.

New York's vibrant religious and independent school sector serves many of the state's students in a wide variety of settings. The New York Board of Regents celebrates the diversity of these schools, which reflects our state's broad diversity and tradition of welcoming newcomers from around the world. Protecting these schools is a core commitment of the Regents' and New York State's commitment to respect students and families of all backgrounds. This understanding is an essential starting point for this work.

With that in mind and given the differences between public and nonpublic school settings, the determination that students are receiving the instruction to which they are legally entitled poses some challenges. Thus

Substantial Equivalency 2023 Guidance

Questions at any time may be directed to the ORISS office at SEsupport@nysed.gov. Those without access to the internet can write to or call:

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New York State Education Department
Room 1074EBA
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Substantial Equivalency 2023 Guidance

administrative identification number issued to a nonpublic school and assigned to a specific nonpublic school site to recognize such site by the Department.

Substantial equivalency of instruction for a nonpublic school means an instructional program which is comparable to that offered in the public schools and is designed to facilitate students' academic progress as they move from grade to grade (8 NYCRR 1301[b]). Comparable should include consideration of any artifacts that collectively show that age and grade appropriate instruction of suitable depth and breadth is implemented in all mandatory subjects and is designed to facilitate students' academic progress from grade to grade. Substantially equivalent does not mean that a religious or independent school must have the same schedule or teach exactly the same content as the public school.

PART II: Substantial Equivalency Pathways

Prior to the promulgation of the regulation, educators in both public and nonpublic schools found the review process unclear. To address these concerns, the new regulation clarifies the subjects to be considered, limiting the required subjects for a substantial equivalency review to the core subject areas required by the state's Education Law, along with other statutorily required subject areas. At the same time, the regulation provides flexibility through the use of six additional pathways, beyond local review, that can be used to confirm that a nonpublic school is providing substantially equivalent instruction to its students. This guidance will elaborate on the pathways. For those pathways that require components to be approved by the Department, the guidance will describe processes for obtaining such approval.

The pathways established by the regulation are:

- 1) Registered high schools and their affiliated lower grade programs;**
- 2) State approved private special education schools, state operated, or state supported schools;**
- 3) Accreditation by an approved accreditor;**
- 4) Schools with International Baccalaureate programs;**
- 5) Federally approved schools;**
- 6) Regular use of approved assessments demonstrating academic progress;**
- 7) Title I or Title II approved.**

Substantial Equivalency 2023 Guidance

Pathway 1: Registered High Schools

Registered high schools are nonpublic schools that are voluntarily registered with the Board of

Substantial Equivalency 2023 Guidance

status by the Department, can be found on the NYSED website at <http://www.nysed.gov/nrpublicschools/nrpublichighschool-registration>

Pending Registered If a public school elects the registration pathway but is shown on the SEDREF website as “pending” registration status, the LSA and applicant should contact ORISS for further information. High schools with “pending” registration status may use the registration pathway only if they have been recently visited by NYSED staff, have been deemed to be approvable and are merely awaiting a meeting of the Board of Regents so that full registration status can be conferred. Any other high school with pending registration status (for example, those that still need to provide more information to the Department or have recently changed location and need a new site visit) must choose another pathway.

Substantial Equivalency 2023 Guidance

Pathway 2 State Approved Private Special Education Schools, State Operated or State Supported Schools

State approved private special education schools and state operated or state supported schools

Substantial Equivalency 2023 Guidance

Pathway 3 Accreditation

Accreditation is a process through which a school demonstrates to an accreditor, through a rigorous and established process, that its educational program and school management meet certain standards. Under the regulation, accreditation by an approved accreditor is an accepted pathway to demonstrating that a nonpublic school provides instruction that is substantially equivalent. Nonpublic schools may choose to become accredited by a variety of accrediting organizations. Each accreditor has its own mission, emphasis, and standards. Each accreditor also chooses how to apply its own priorities in its accreditation process.

NYSED will not interfere with such priorities and processes accrediting organizations have developed to ensure that schools meet their standards. Under this pathway, the regulation does require that to be approved, the accrediting body must:

Use a peer review process that includes evaluation by leaders of similar nonpublic schools

Appropriately train all staff and peer reviewers who are involved in the accreditation process

Accredit based on publicly accessible documented standards that include

Substantial Equivalency 2023 Guidance

Should a nonpublic school opt to use the accreditation pathway to demonstrate substantial equivalence, it will inform the LSA and provide evidence of its term of accreditation, i.e., start date and expiration date of its accreditation. NYSED may seek that information directly from accreditors, if needed.

Provisional Accreditation or in process accreditation may precede full accreditation from an accreditor and does not satisfy the accreditation pathway unless, based upon the Department's review, the particular status satisfies the requirements of the regulations overall and provides assurance that the intent of the Compulsory Education Law is fulfilled. In any event, materials prepared as part of the accreditation process should be used in the local review process.

For Accreditors

Gaining NYSED Approval: If an accrediting organization wishes to gain NYSED approval for its accreditation process, it must provide evidence that demonstrates that the organization's process meets the regulatory criteria as outlined above.

Accreditors seeking approval by NYSED can apply to SEsupport@nysed.gov.

Accreditors should indicate in the application materials whether they use provisional or in process statuses and whether they propose that such statuses be accepted by the Department for this pathway.

NYSED staff will review the information provided and may seek additional information, which might include NYSED staff members accompanying teams from that accreditor on accreditation visits in New York State schools.

The Department will indicate on the approved list of accreditors whether the accreditor's provisional accreditation is acceptable.

Any prior recognition of an accrediting organization by the Department or Board of Regents for other purposes may be noted on an application but is not in and of itself determinative for approval under this pathway.

Reapproval Cycle: The accreditation organization will be asked to demonstrate that its process remains consistent with the criteria on a regular cycle, every five years.

Mid Cycle Reviews: Should concerns arise, NYSED may observe the accreditation process and review documents at any time for accreditors that it has approved for this purpose. Should the organization prefer not to be observed, it may voluntarily withdraw from the approved list.

Removal: NYSED may remove an accreditor from the approved list at any time if NYSED determines that the accreditor no longer meets the requirements for approved accreditors. Notice of such a determination will be provided to the accreditor and to any affected schools in writing. Schools affected by the removal of an approved accreditor will need to elect another pathway.

Substantial Equivalency 2023 Guidance

Pathway 4 International Baccalaureate Programs

If nonpublic schools participate in the International Baccalaureate (IB) Program, they will be considered substantially equivalent by the LSA upon notification and submission of evidence it has fully implemented a successful IB program at the school. The LSA can confirm that a school has approved participation in the IB program by reviewing the IB Program website listing at <https://www.ibo.org/about-the-ib/ib-world-schools-yearbook/>. A link to this information will be posted on NYSED's ORSS website.

Substantial Equivalency 2023 Guidance

Pathway 5 Federally Approved Schools

Any nonpublic schools operating under the auspices of the federal government, such as Department of Defense Education Activity schools located on military bases (the United States Military Academy at West Point), shall be considered substantially equivalent.

NYSED will maintain a list of these schools on its website. Should LSAs have a question regarding one of the "ftSholing" o " idMo Mielthead" " ise at atg

Substantial Equivalency 2023 Guidance

Approved by the Department

Approved Tests: While the Department develops a comprehensive list of approved assessments, it should be noted that State administered assessments such as Regents exams, 3-8 Mathematics and ELA assessments, Grades 5 and 8 Elementary and Intermediate Level Science Tests, NYSEA, and the NYSESLAT assessments may be used to demonstrate compliance. The list of approved assessments will be posted on the NYSED website at <https://www.nysed.gov/nrpublicschools/substantial-equivalency>. Note that only summative/cumulative assessments will be acceptable for demonstrating compliance with this pathway. Assessments that are only used in the capacity of diagnostic, interim, or formative tests will not be included on the list of those approved.

Approval for new tests: NYSED will post a list of other summative/cumulative assessments which may be approved on its ORSS website. School leaders who wish to request consideration

Substantial Equivalency 2023 Guidance

Proficiency Rate The regulations do not specify any minimum proficiency rate, but consistent lack of proficiency over a span of years may inform consideration of whether the tests and analysis of the results are regularly part of the school's instructional program, as discussed in the next point.

Regularly Used by the Nonpublic School as Part of Its Instructional Program Consideration of this criterion involves both regularity of use and relationship to instructional program.

Nonpublic schools proposing to use the Assessment Pathway must provide the following information to the LSA:

Identification of the approved (or approvable) assessments given across multiple grade levels. Some form of end-of-year summative/cumulative assessment(s) should be administered for each grade from 3 through 12 (though different assessments may be used in elementary/middle/high school if necessary). Note: Assessments are not required for kindergarten through grade 2. If a nonpublic school only serves kindergarten through grade 2, another pathway must be used.

The assessments must cover the core subjects (that is, at least mathematics and English language arts in the elementary grades; and additionally, science in intermediate and secondary school, and social studies in secondary school).

The assessments should be administered at intervals comparable to, but not necessarily identical to, State assessments and include the core subjects. For example:

Elementary and intermediate level students: New York State provides the Grades 3-8 English Language Arts and Mathematics Tests, and Grades 5 and 8 Elementary and Intermediate Level Science Tests.

High School Students: New York State provides Regents examinations in ELA, Mathematics, Science, and Social Studies, and

English language learners (all grades): New York State provides the New York State English as a Second Language Test (NYSESLAT) which is composed of four sections, speaking, listening, reading, and writing.

Describe how assessments relate to the school's curriculum.

Describe how results are incorporated into the school's improvement efforts, i.e., how the school addresses evidence of student progress, or the lack thereof, both for individual students and improved grade level instruction overall.

NOTE: Determining whether the school's assessment models are regularly used and bear a relationship to the instructional program is the only area in which an LSA should engage in additional investigation.

Pathway 7: Local Reviews

Nonpublic schools may choose to continue to use the traditional local review pathway, which will result in an LSA determination or Commissioner's determination, depending on whether the Commissioner is responsible for making the final determination pursuant to 8 NYCRR 1302(b). In this section, the Department provides select guidance regarding (1) review criteria and (2) review and determination procedures.

Criteria for Substantial Equivalency Reviews

The goal of the local review process is to confirm that the nonpublic school is providing instruction in the required subject areas for its students of compulsory education age. The expectation is that these interactions will be mutually cordial and respectful of schools and their instructional approaches. As stated in the regulation, reviews must be conducted in a manner that is sensitive and respectful of nonpublic school communities. This includes a focus on opportunities offered to nonpublic school students to acquire core skills and make academic progress. Instructional programs in nonpublic schools need not demonstrate perfect congruence between public and nonpublic school instruction. The Department believes that the proposed rule will enable nonpublic schools to comply with the Compulsory Education Law while also maintaining their unique culture and beliefs in the delivery of instruction.

Important cognitive skills may be developed in these schools in ways that are different from public school models. A nonpublic school may choose whether to integrate required instruction into religious classes either in whole or part for purposes of consideration by the LSA. For example, some schools have intellectually rigorous religious education programs that develop close reading, textual analysis, and other cognitive skills. If the nonpublic school so chooses, these aspects of the school's program may be considered and included in the overall review as demonstrating that instructional requirements are met through the entire curriculum. At the same time, we caution that it is not appropriate for the LSA to review the religious content itself. LSA reviews, or their representatives, must focus on recognizing the development of skills and knowledge in the nonpublic school's program. The LSA, and/or their subcontractor, shall be informed by, and respectful of, the cultural and religious beliefs and educational philosophy that may drive the curriculum in nonpublic schools and be integrated with academic content in the delivery of instruction (13010(d)).

The review process must address the criteria enumerated in 8 NYCRR 1309 for substantial equivalency reviews, which are contained in the Compulsory Education Law. These include organizational and content requirements as follows:

Instruction is given by a qualified teacher or other qualified personnel.

Substantial Equivalency 2023 Guidance

Teacher Competence

School recruitment, hiring policies, and other evidence as to how the nonpublic school implements its policies through staff assignments aimed at providing substantially equivalent instruction in the required subject areas

State certification (although nonpublic school teachers need not be certified).

Professional development or continuing education policies and information on how they are implemented

Teacher observation and evaluation methodology, including whether and how the school's teacher evaluation methods measure and take into account teacher effectiveness

Observation during the site visit suggesting that the staff possess a mastery of course content and knowledge/skill to provide substantially equivalent instruction in the required subject areas

Substantial Equivalency 2023 Guidance

Student goals and/or assessment results (with appropriate privacy protection) or other evidence that the school measures academic progress throughout the year and from grade to grade

The assembled records should confirm that the curriculum described by the school is comparable to that offered in the public schools and actually delivered to students. The task of the reviewer is to ensure that students of compulsory age are receiving sufficient instruction in the required subject areas to enable them to make progress from grade to grade.

English as the Language of Instruction

Education Law § 320(2)(i) requires that “English shall be the language of instruction, and text books used shall be written in English” but the regulation does not exclude content taught in a language other than English.

The statute also provides an exception “for a period of three years, which period may be extended by the commissioner with respect to individual pupils, upon application therefor by the appropriate school authorities, to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth or ancestry have limited English proficiency, shall be provided with instructional programs as specified in subdivision two a of this section and the regulations of the commissioner. The purpose of providing such pupils with instructions shall be to enable them to develop academically while achieving competence in the English language.”

As noted above, we emphasize that for nonpublic schools that serve students who are English language learners, the review must take this into consideration, balancing the need for students to progress in their use of English, as well as their mastery of the required content. Reviewers would expect to see efforts to improve students’ mastery of the English language, with the portion of instruction in core subjects provided in English for students going overtime, consistent with the intent of the Education Law.

Substantial Equivalency 2023 Guidance

NYCRR 1303 ISAs must complete substantial equivalency determinations (and recommendations for schools subject to a Commissioner's determination) for all new

PART IV: Safeguards

The regulations provide numerous safeguards to ensure that substantial equivalency determinations are fair and accurate. These safeguards include: (1) the ability for the Commissioner to review evidence submitted to the LSA from the nonpublic school demonstrating that it meets a pathway pursuant to section 1303(b); (2) the complaint procedure outlined in section 13011; (3) the option for those considering themselves aggrieved by an LSA's substantial equivalency determination to file an Education Law § 310 appeal to the Commissioner pursuant to section 13012; (4) the Commissioner's ability to review records and/or documentation that an LSA used to make its substantial equivalency determination, and (5) the Commissioner's ability to initiate review of the determination to determine whether it is supported and issue a decision on such pursuant to section 13013. We offer guidance on a few such safeguards here.

Complaints

Pursuant to section 13011 of the regulation, the Commissioner has the discretion to direct an LSA or Board of Cooperative Educational Services (BOCES) to investigate a nonpublic school if the Commissioner has cause for concern regarding the substantial equivalency of instruction at such nonpublic school, either based on a complaint or some other source of information. This section does not require the Commissioner to direct an investigation based upon the receipt of any complaint; rather, it provides discretion to do so. If the Commissioner receives complaints that are not credible or do not relate to substantial equivalency of instruction, the Commissioner need not direct an investigation under section 13011. The Commissioner may elect to request records for review in connection with his or her inquiry into the validity of a complaint.

The scope of an investigation pursuant to section 13011 will be tailored to the nature of the Commissioner's concern about the instruction provided at a nonpublic school. For example, if there is reason to believe that a school fails to provide a physical education program, the Commissioner may direct the LSA to investigate the school's physical education program and determine (or make a recommendation as to) whether this aspect of the school's educational program is substantially equivalent.

An LSA or BOCES that receives a complaint about the substantial equivalency of instruction at a nonpublic school within its geographical boundaries may use its discretion—subject to contrary direction from the Commissioner—to determine whether the complaint has merit and whether an investigation is warranted.

Nonpublic schools demonstrating substantial equivalency through any pathway may be the subject of a complaint and an investigation pursuant to this section.

The Department will investigate complaints about registered nonpublic schools. If an LSA receives a complaint about a registered nonpublic school, it should forward such complaint to ORISS for processing.

Substantial Equivalency 2023 Guidance

A party with a concern that a school's instruction is not substantially equivalent may contact ORSS.

A complaint should include, at a minimum

- The school's name;**
- The school's address;**
- The party's affiliation or connection with the school (alumnus, parent, etc);**
- The reason for the complaint; and**
- Any evidence or supporting documentation regarding the allegations being made**

Appeals to the Commissioner of Education

Persons considering themselves aggrieved by an LSA's substantial equivalency determination may file an appeal to the Commissioner within 30 days of the LSA's decision pursuant to Education Law §310 and section 275.16 and the Commissioner may, in their discretion, stay such determination pending a final determination on such appeal pursuant to Education Law §311 and section 276.1. An individual may not maintain an appeal pursuant to Education Law § 310 unless aggrieved in the sense that they have suffered personal damage or injury to their civil, personal, or property rights. While the regulation only expressly requires an LSA to notify schools of their right to appeal at the time of a final substantial equivalency determination, parties may be sufficiently aggrieved at an early stage of the review to permit an appeal.