SCHOOL LAW
INFORMATION MEMO
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Substantial Equivalency Law for Nonpublic Schools Amended

On May 8, 2025, the New York State Legislature passed the state's budget legislation and, on May 9, 2025, Governor Hochul approved it. The legislation included several provisions that modified the New York State Education Law. One particular change was somewhat controversial in that the New York State Education Department (NYSED) actively campaigned against it. The change relates to New York's Compulsory Education Law requirements for students who attend nonpublic schools.

Background:

New York State Education Law 3204 requires instruction provided in nonpublic schools to be "substantially equivalent" to education provided in public schools in the state. Specifically, the law states: "[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" (see NY CLS Educ § 3204(2)(i)) (emphasis supplied) (the Substantial Equivalency Law)). Until recently, the term "substantially equivalent" was not defined and, historically, determinations finding schools not "substantially equivalent" were rare.

In 2022, NYSED promulgated regulations defining substantial equivalency and setting forth a process by which nonpublic schools are determined to meet that standard (see 8 NYCRR Part 130). Substantial equivalency was defined as "an instruction program which is comparable to that offered in public schools and is designed to facilitate the students' academic progress as they move from grade to grade" (*see id.* at 130.1(b)). With one notable exception, the regulations impose obligations on local school districts to determine whether nonpublic schools located within their districts meet that standard (*see id.* at 130.2(a)). The notable exception is that NYSED reserved authority to make the ultimate determination as to whether schools subject to Education Law 3204(2)(ii-iii), commonly known as the Felder Amendment, meet the standard.

The Felder Amendment was designed to apply to yeshivas, single-sex Jewish schools that focus on teaching curricula directly tied to Jewish culture and close review and study of religious texts. Under the existing regulations, although school districts make recommendations relative to the instruction provided at yeshivas, NYSED has the exclusive control and ability to determine whether yeshivas meet the substantial equivalency standard. Over the last several years, NYSED has publicly criticized some yeshivas for not providing substantially equivalent instruction, and credible media sources have reported that NYSED retained the exclusive authority to determine whether yeshivas met the instructional standard with that purpose in mind.

New Legislation:

The change to the Substantial Equivalency Law made by the Legislature and approved by the Governor in the budget legislation does not expressly alter the process by which school districts or NYSED evaluate nonpublic schools to determine whether they are providing substantially equivalent instruction, but it does take away districts' and NYSED's exclusive control over those determinations.

The legislation creates a new subdivision in the Substantial Equivalency Law – i.e., Subdivision 6. According to Subdivision 6, "[i]nstruction at a nonpublic school satisfies all the requirements" of the Substantial Equivalency Law if the school is: a registered high school or nonpublic school serving grades one through eight that has a registered high school; a state-approved private special education school or state-operated or state-sponsored school; a nonpublic school accredited or awarded provisional status by an accreditation agency approved by the Commissioner; a nonpublic school that participates in an international baccalaureate program; a nonpublic school whose instruction is approved by the United States government; a nonpublic school in which the percentage of students who score "proficient" on a year-end summative or cumulative assessment and taken in the same subject areas and for the same grade levels as the annual New York State testing is equal to or greater than that of similarly situated students in the same geographic area or statewide; or a nonpublic school that administers a year-end summative or cumulative assessment taken in substantially the same subject areas and same grade levels as the annual New York State testing program has a three-year average participation rate equal to or greater than the three-year state average and uses the assessment data to improve instruction.

The legislation further explains nonpublic schools who wish to administer year-end summative or cumulative assessments can take advantage of a "phase-in" period to "allow for adequate preparation of students" for those assessments. During the "phase-in" period, nonpublic schools and their affiliated schools "shall be deemed to have met the criteria" set forth in Section 6 (*i.e.,* that their instruction is "substantially equivalent.") Additionally, when year-end summative or cumulative assessments are used, the assessments must be "culturally competent and respectful of cultural curricula and pedagogy."

On its face, the legislation does not address what happens in the event NYSED has already determined a school is not substantially equivalent, but does make clear that a "nonpublic school's satisfaction" of the criteria set forth in the forthcoming statute in one particular school year does not automatically mean it has met the criteria in subsequent school years. The language also expressly indicates a nonpublic school may "elect at any time to select different criteria," and a school's "omission to satisfy one or more criteria shall not affect" the school's "ability to satisfy another criteria, or such criteria at a later date."

For questions about the implications and/or application of the new legislation, please contact Kirsten Barclay or Jennifer Schwartzott.

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