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Ms. Christina Coughlin

Assistant Commissioner for School Governance, Policy, and Religious and Independent Schools

New York State Education Department

89 Washington Avenue

Albany, NY 12234

RE: Substantially Equivalent Instruction for Nonpublic School Students (EDU-27-19-00010-P)

Dear Ms. Coughlin:

I am writing on behalf of the New York State Council of School Superintendents to offer comments on the Department's proposed regulations regarding substantially equivalent instruction for nonpublic school students.

The proposed regulations would impose excessive new demands upon the capacity of school districts. We believe, also, that direct oversight of nonpublic schools should be made a state responsibility.

The notice of proposed rulemaking published in the State Register asserts that, "No additional costs are imposed [by the proposed regulations] on local governments beyond those imposed by law." We dispute that assertion.

Pre-November 2018 guidance which districts have operated under did not expressly require public school officials to conduct formal reviews of nonpublic schools within their district boundaries at prescribed intervals. Rather, it suggested a more passive framework, so that school district intervention should occur if knowledge of deficiencies arose. For example, it read in part:

Through experience gained over time, local school officials are usually familiar with nonpublic schools which have been in existence for several years. Schools have a known record through children transferring in and out of the school and their subsequent achievements in public schools and colleges. If, however, a serious concern arises about equivalency of instruction in an established school, the superintendent of schools of the district in which the nonpublic school is located should inform the officials of the nonpublic school that a question has been raised about equivalency of instruction in the school. The superintendent should then discuss the reason for the inquiry informally with the nonpublic school officials.

That guidance outlined follow-up steps as suggested practices, rather than as explicit legal obligations of school district officials—as “shoulds,” rather than as “shalls.” For example:

If, after this discussion, the superintendent of schools concludes that there is a serious problem, the superintendent should discuss it with the District Superintendent, where appropriate, and with the Nonpublic School Services office. If the problem is not resolved at this point, the superintendent should provide to the nonpublic school officials the basis of the question in writing. In addition, the superintendent of schools should, if necessary, ask to visit the nonpublic school at a mutually convenient time in order to check on the information which led to the assertion of lack of equivalency. The superintendent should review materials and data which respond to the assertion and discuss with the officials of the nonpublic school plans for overcoming any deficiency. If the problem can be remedied within a reasonable amount of time, the superintendent and the administrator should agree on a plan and schedule for arriving at a satisfactory solution.

The prior guidance also did not define with specificity what criteria school district officials were to apply in assessing substantial equivalency of instruction.

In contrast, the proposed regulations would establish a target date for completion of reviews of all existing nonpublic schools of the end of the 2022-23 school year and set an expectation that all schools would be regularly reviewed thereafter.

The proposed regulations would also require local school district authorities to “...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.” This would be an altogether new mandate upon school districts—there has been no requirement to this point that school districts aid nonpublic schools in necessary remedial activities.

Further, new guidance issued by the Department in November 2019—presumably indicative of expectations for how district officials would fulfill obligations under the proposed regulations—included 11 pages of procedural instructions, a 14-page review checklist, and five pages of questions and answers.

Again, we believe that reviewing and assuring the adequacy of instruction in nonpublic schools should be exercised by state authorities. We reject the assertion by some of our nonpublic school colleagues that school district officials cannot be entrusted to fairly apply criteria for determining whether nonpublic schools are offering students adequate learning opportunities. But we do see requiring local public school officials to exercise more intrusive oversight of nonpublic schools as potentially detrimental to what most often have been constructive relationships, beneficial to students attending nonpublic schools.

We do not believe that existing state law must be interpreted to require school district officials to exercise primary oversight of nonpublic schools. Education Law sections 3204 and 3205 establish requirements for compulsory attendance and the essential elements of adequate instruction, but they do not expressly define responsibilities for district officials in nonpublic

school oversight. Section 3210 does assign district officials a responsibility for determining substantial equivalency of instruction, but only in instances where nonpublic school students attend school for shorter school days, school years, or both, than their district counterparts. If nonpublic schools offer instructional time equivalent to that provided by district schools, oversight need not be assigned to district officials.

State Education Department leaders have said their agency does not now have the capacity to exercise direct oversight of nonpublic schools as envisioned by the proposed regulations and we do not dispute their conclusion. We have routinely advocated for greater support for the Department's operating budget. But, to the extent that the proposed regulations would assign oversight expectations greater than those of prior state guidance, they would impose demands upon the capacity of school districts which some would be challenged to meet. We note that, outside New York City, nearly 40 percent of nonpublic school students attend schools located in the poorest 10 percent of districts, measured by percentage of students qualifying for free and reduced-price lunches. District leaders serving many of the state's poorest schoolchildren would be most burdened by the new obligations.

Whether direct oversight is to be exercised by state or school district representatives, there are steps which could lessen the demands of that work for either party.

First, rather than requiring intensive periodic reviews involving every nonpublic school and every school district which encompasses such schools, a risk-based approach could be applied. In-depth reviews could be required when judged warranted based upon unacceptable results on indicators prescribed by the Department or upon receipt of a credible complaint. Less intensive regular reviews could be required, similar to those now undertaken by many districts, and if one reveals a potentially serious deficiency, a more intensive review could then be initiated.

We also recommend that, if a nonpublic school has been accredited by an agency approved by the Department, such as the Middle States Association of Colleges and Schools, that accreditation should suffice as evidence that the school is providing adequate instruction. Organizations which advocate on behalf of schools might be excluded from eligibility to serve as accrediting agencies. There should be no quota on how many accrediting agencies the Department could approve.

We recognize the authority of the state to assure that all children receive the opportunity for a sound basic education—whether in a district, charter, or nonpublic school, or at home—and the moral imperative of doing so. We want to be part of any discussions of how to best fulfill that obligation.

Sincerely,



Robert Lowry

Deputy Director for Advocacy, Research, and Communications