

# The New Substantial Equivalency Regulations: What Every Yeshiva Parent Needs to Know

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## **I haven't heard about this issue for a while. How did we get here?**

So much has happened that this needs a timeline (see below)!

In short, in 2015, a group called YAFFED, composed mostly of individuals who have left their Orthodox Jewish communities, filed a formal complaint with the NYC Department of Education against dozens of yeshivas. Although YAFFED members did not attend the majority of the yeshivas in their complaint, they alleged that the yeshivas don't provide education that is "substantially equivalent" to that of neighboring public schools, however vaguely the law defines it. This launched an investigation.

After years of YAFFED agitation, lobbying, nasty newspaper articles, and rallies, and with support from Reform and anti-religious groups, the New York State Education Department (SED) released Guidance in November 2018, (re)defining the substantially equivalent education that nonpublic schools must provide.

The Guidance described a regime mandating an untenable number of hours of secular instruction, and a long list of objectionable courses, or nonpublic students would be considered legally truant. The Guidance was strongly opposed by the Catholic schools; was unacceptable to the nonpublic school community, many government officials, constitutional watchdogs, and surely to nearly every yeshiva and Bais Yaakov parent. Lawsuits were filed by Agudath Israel, the newly formed PEARLS, and Torah Umesorah, as argued by attorney Avi Schick, and Independent and Catholic schools. The court sided with nonpublic schools and found that the "Guidance" was illegally implemented, and require a 60-day public comment period as Regulations before becoming law.

When the SED re-released the Guidance as Regulations, in the summer of 2019, a record-breaking 140,000 comments flowed in, nearly all in fierce objection. The state returned to the drawing board.

## **So, what's going on now?**

On March 30, 2022 after years of deliberation and meetings, a new version of proposed Regulations was issued. It makes no mention of specific hours requirements, and describes six pathways under which nonpublic schools are automatically substantially equivalent, and are exempt from a Local School Authority review. A public comment period was triggered, which closes May 30.

## **It sounds like these Regulations are much better! Does that mean there is less of a need to comment now than last go round, when there was a big push to do so?**

Yes, these Regulations are an improvement. But the 32-page document contains serious immediate flaws, and long-term concerns, which can endanger yeshivas.

If anything, that these Regulations are an improvement is precisely an indication that we MUST comment. It demonstrates something very clearly: comments work. The changes in the 2022 Regulations from the 2019 version track the comments that were submitted by parents, yeshiva graduates, administrators and others, and the SED has said so explicitly.

## **Can you please describe some of the immediate concerns about the Regulations? Six Pathways to automatic equivalency sounds pretty generous.**

It does... until you take a closer look. One of the pathways toward equivalency is for instruction offered on a military base. Another is for various forms of state operated schools (something we are trying to avoid!). Yet another is for international baccalaureate programs, a form of schooling typically attended by the children of diplomats.

The next three are a bit more helpful, but flawed. Registered high schools, and elementary schools connected to a

registered high school, are deemed equivalent. But not every high school is, or wants to be, registered with the state, as this carries its own set of rigorous requirements. Moreover, many of our schools are K-8, and thus this pathway does nothing for them. The administration of assessments, or certain standardized exams, is another pathway, but its implementation is unclear, and the assessments allowed are not offered in all the required subjects. Accreditation by an external body is the final pathway. However, the state has made it difficult to include the accrediting body that approves most of the Catholic and Jewish schools.

Once a school is outside the pathways, it is subject to a full LSA review. This opens the school to various criteria, such as if teachers in the school are "competent" (according to who and adjudicated by what standard?). Required coursework includes hygiene; the history, meaning, significance and effect of the provisions of the NY Constitutional Amendments (please don't test me on that!); and the misuse of drugs, including but not limited to heroin and opioids. The code sections incorporated into the document by reference include even more detailed requirements.

If failure for noncompliance would result in a slap on the wrist, we could all giggle about how the state requires 3rd graders to be fluent in "highway safety and traffic regulation." However, the penalty for noncompliance can ultimately lead to the state providing, "a reasonable timeframe for parents or persons in parental relationship to enroll their children in a different appropriate educational setting." While we sincerely hope that this will never occur, and it is indeed unlikely, this is what's on the books.

## **Is the public school system, which is under government's direct control, subject to the same expectations and penalties?**

No. There are many wonderful public schools. But there are many woefully

underperforming public schools as well. And it is bewildering that failing public schools (which nonpublic schools must be substantially equivalent to) have been given decades to correct themselves, and additional funding to boot, before any negative consequences occur, yet fully private schools can effectively be shut down in a matter of months for being "nonequivalent."

### **Once a school has clearly proven that it is substantially equivalent, can it breathe a sigh of relief?**

No, and this is one of the most troubling aspects of the Regulations.

At any time, and for any reason, the Commissioner may request records and documentation from the LSA used to determine substantial equivalency. In some cases, the Commissioner may then unilaterally determine that the nonpublic school is not equivalent.

Even worse, "persons considering themselves aggrieved by an LSA's substantial equivalency determination" may file an appeal to the Commissioner, and the Commissioner may then stay the determination made by the LSA. By its plain language, a student who attended a yeshiva 40 years ago may wake up one day and "consider himself aggrieved" by his education. How about an uncle? Neighbor? Or, most likely, YAFFED members - who seem perennially aggrieved.

Moreover, LSAs are harshly penalized for not investigating complaints. Specifically, "if an LSA does not investigate and make a determination on such complaint, the Commissioner may withhold public moneys from such LSA..."

A basic legal principle is that a plaintiff must have standing to file a lawsuit, and demonstrate that he was directly harmed by the defendant. Otherwise, anyone could sue everyone. That the foundational American legal principle of standing was disregarded, and that the Commissioner can challenge and overrule the determination of an LSA, puts yeshivas at perpetual risk.

### **Are there any longer-term concerns?**

There is always a concern with government that once it starts regulating

an area, what will come next? What will be the next course, topic, or activity required? Especially with society moving in directions which do not always align with Jewish values. It is dangerous to be at the mercy of today's societal mores, and the whims of a particular legislature or Commissioner.

### **Is this an issue for only Chassidische yeshivos? Should "Modern Orthodox" and "Litvishe" yeshivos be concerned?**

Different parents and segments of Klal Yisroel have chosen different schools for their children. Some like larger schools; some prefer closer knit ones. Some want a more rigorous secular studies, with a focus on AP exams; some prefer a more relaxed pace.

If, as a parent, you want to be the final arbiter of the kind of education your child receives, and not government, you should be concerned.

This is doubly so when Regulations require items beyond the legitimate educational fundamentals, including various unnecessary and objectionable courses; abuse-prone and vague requirements; and open the field for anyone to launch a complaint against a yeshiva. And that is just what the requirements are today.

### **It sounds like this issue will eventually go to court or the legislature. So, why bother with comments?**

This issue may well head to a courtroom one day, at which time anything can happen. Or legislation may address it. But we must fight the battle before us now. Now, the state is saying, "Tell us what you think of these Regulations." Let's hope the response is sufficiently persuasive and unified - as it was last time - that the state listens. And even if the state only listens somewhat, it is far better to head to court with six issues with the Regulations, than 12.

Moreover, comments now can be crucial to advocacy later. For example, if there are only 5,000 comments of opposition, it will be hard to argue that these Regulations trample parental rights.

### **These Regulations sound really concerning! Do you believe that**

### **members of the SED and Board of Regents are doing this to spite yeshivas?**

There are certainly some in government less sympathetic to yeshivas than others. But, to take a step back, our talmidim spend most of their day steeped in ancient Biblical and Medieval Hebrew and Aramaic texts, discerning moral and legal lessons. This is radically different than anything in the secular world. The idea of arguing for LESS (secular) education, and perhaps choosing (as opposed to doing so out of some failure) not to attend college, is utterly alien to many government officials.

### **Why should you get involved if you live outside of New York?**

If you or your children went to yeshiva in New York State, you are a stakeholder! Write a letter extolling the success of your yeshiva education.

Other states are watching. If these regulations are implemented in New York, other states may follow suit.

The issue of educational freedom is very close to our hearts. This is an issue that all non-public school parents should be passionate about.

We must stand with and support the acheinu bnei Yisroel in the largest community in North America. They, and the state are looking to see how yidden across the country respond to this.

### **Any letter written must be respectful, and with a recognition that we are coming from different places.**

### **With a vocal minority making their voices heard against traditional yeshiva education, it is so important for us to make our voices heard now.**

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