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August 15, 2019

MaryEllen Elia, Commissioner  
New York State Education Department  
89 Washington Avenue  
Albany, NY 12234

Dear Commissioner Elia:

I am writing to provide comment regarding the Department's proposed regulations on Substantial Equivalency Review and Determination, which were recently published in the NYS Register (July 3, 2019). I fully support the Department's regulatory efforts to establish a process to review and determine compliance with New York's longstanding "substantial equivalence" standard.

Education is the great equalizer. It is a cornerstone of our Country and State and gives every child an opportunity to succeed. For this reason, our State Constitution guarantees every child the right to an education, the Court of Appeals has solidified this right and New York was one of the first states to enact compulsory education laws. These laws mean nothing, however, if a child is not receiving a secular education that prepares them for the modern economy. A sound basic education is more than just the requisite time spent in a public or private schoolhouse. To be intellectually consistent with our constitution and laws, a sound basic education must entail a baseline curriculum that prepares a student to participate and compete in our economic, civic and social society. Therefore, every school, public and private, must provide an instruction that meets this minimum standard. This is already provided for in our laws and is known as the "substantial equivalency" standard. Private schools must provide instruction that is at least substantially equivalent to the public schools. For too long this standard has been the law but there has been no clear guidelines or enforcement mechanism to ensure compliance. The Department seeks to change that with these new guidelines and should be congratulated for closing this loophole. A broad standard without definitive guidelines or enforcement mechanisms is useless.

The reality is that an overwhelming majority of non-public schools provide a stellar education to students; a fact that New York should be proud of. Unfortunately, over the past several years we have received complaints from former students about the quality of education in a yet undetermined number of schools. These complaints brought to light serious allegations that certain schools were depriving young children of an adequate education. This highlighted a

weakness in our State's processes related to both determining equivalency and the steps to address non-compliance. The proposed rules on substantial equivalency provide clarity on this issue by establishing a process for local school districts to use. It was not extreme or unreasonable, as some have painted it, but rather a measured and balanced approach to fulfilling New York's obligation to students. The Department should not be deterred by vocal or political opposition. Ensuring an adequate education for every New York child must be the clear and unequivocal goal of the Department.

I have a few specific comments on the proposed regulations that I would like to share. The proposed regulations require new non-public schools to be subject to a substantial equivalence review within three years from when the school commences instruction. The three year timeframe for new non-public schools to be evaluated is unnecessarily long and a shorter period for a review would be a more efficient model. The substantial equivalence review for new non-public schools is an important collaborative step for both the local school authority (LSA) and non-public school administrators to comply with the substantial equivalence guidelines. A more expeditious review will provide for a smoother transition and allow for any potential inconsistencies to be corrected quickly.

The proposed regulations call for all existing non-public schools to undergo a substantial equivalence review by "the end of the 2022-2023 school year or as soon as practicable thereafter." Although, I hope that LSAs and non-public schools work collaboratively to ensure all students receive an appropriate education, the ability for LSAs to extend beyond the 2022-23 school year is concerning. The Department should remove the language "or as soon as practicable thereafter" which would allow non-public school reviews to be delayed indefinitely. There must be a definitive deadline to complete the review and determination or they will languish. Any extension should be applied for and only granted temporarily, for good cause and for a definitive time frame.

In addition to the initial reviews for existing non-public schools, LSAs are required to complete reviews and determinations "regularly thereafter," ensuring a continued oversight process. I applaud this addition to the regulations as this will enhance the ability of the LSA to provide long-term guidance on the substantial equivalency of non-public schools within their jurisdiction. I believe that a minimum timeframe should be established for regular inspections to be completed. A set frequency would give the LSAs a more structured process and ensure equal statewide compliance.

Lastly, I would suggest that the Department establish a contingency should a LSA fail to adequately provide oversight. School boards are elected bodies and unfortunately, the Department must guard against political influence and interference in the review process. The Department should audit the LSA process and provide intervention when necessary.

In conclusion, the Department's proposed regulations on Substantial Equivalency Review and Determination are necessary in order to provide guidance for LSAs to conduct these reviews. New York's longstanding law on substantial equivalence was not an accident and was designed to ensure that students were afforded a quality education regardless of the school setting. Unfortunately, it has become clear that additional regulations are necessary to achieve the goals

of this law. I want to thank the Commissioner and the Board of Regents for addressing this deficiency and for their steadfast commitment to ensuring every New York child is provided an appropriate education.

I thank you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "K. P. Zebrowski", with a horizontal line extending to the right.

Kenneth P. Zebrowski  
Member of Assembly

Cc: Betty A. Rosa, Chancellor, Board of Regents, New York State Education Department  
Christina Coughlin, New York State Education Department, SORIS