ORTHODOX JEWISH PARENT GROUP CHALLENGES NEW YORK STATE EDUCATION DEPARTMENT SUBSTANTIAL EQUIVALENCY REGULATIONS IN STATE COURT

Hodgson Russ Education Alert
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In October 2022, a parent advocacy group representing various Jewish community organizations in Brooklyn filed a lawsuit in State Supreme Court, challenging new substantial equivalency regulations promulgated by the New York State Education Department and the Board of Regents. The court recently issued a decision ruling that the new regulations do not violate constitutional protections of religious freedom, but that the Education Department did in fact exceed its authority by imposing penalties onto nonpublic schools beyond that authorized by the Compulsory Education Law. Ultimately, the ruling casts doubt on the Education Department's ability to enforce its new substantial equivalency regulations to the extent it is able to direct the closure of noncompliant schools.

I. Overview of the New Regulations

Since 1865, the Compulsory Education Law has required nonpublic schools' instruction to be "substantially equivalent" to the instruction of its local public school. To that end, the Compulsory Education Law establishes a series of requirements for instruction, including mandatory subjects, curriculum, and other health and safety considerations.

The Education Department adopted new regulations (collectively referred to as "Part 130") in September 2022. The new regulations establish several set "pathways" for nonpublic schools to demonstrate that they are "substantially equivalent." However, for every nonpublic school within its geographic boundaries that does not meet a predetermined "pathway," the local school authority ("LSA") must conduct a substantial equivalency review. After the LSA's review, the Superintendent will issue a preliminary determination as to the school's substantial equivalency. If the determination is favorable to the nonpublic school, the determination goes before the local school board for approval.

If the determination is unfavorable, however, the LSA must develop a plan by which the nonpublic school will become "substantially equivalent" in a certain timeframe. If the nonpublic school thereafter fails to attain substantial equivalency within the

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LSA's prescribed timeline, it will no longer be deemed a school, and students would no longer be able to attend its instruction. Thus, the new regulations ultimately condition nonpublic schools' continued operation on the substantial equivalency of its curriculum.

II. A Successful Challenge to the New Regulations

Since its promulgation, the new regulations have sparked debate over parents' freedoms to educate their children. Most recently, a group representing various Jewish community organizations, including Orthodox Jewish day schools known as "yeshivas," filed a lawsuit in the State Supreme Court. The suit, *Parents for Educational and Religious Liberty in Schools v. Young*, challenges the new regulations, claiming they violate First Amendment protections and other constitutional rights enjoyed by parents, and constitute an overreach by the Education Department.

First, the court upheld the substantial equivalency regulations insofar as it requires LSAs to review and determine whether each nonpublic school in its borders is "substantially equivalent" in terms of its instruction. The First Amendment constitutional claims were determined to be without merit. However, the court ruled that the Education Department exceeded its authority by imposing penalties upon the parents of students attending these schools. The court held that the Education Department lacks authority to direct parents to completely unenroll their children from nonpublic schools deemed not "substantially equivalent," nor do they have the authority to direct the closure of such schools. Accordingly, the court ordered the Education Department to strike such provisions from the new regulations.

The court reasoned that parents should be given a reasonable opportunity to prove that their children are receiving substantially equivalent instruction through a combination of sources. Instead of ordering the closure of nonpublic schools deemed not "substantially equivalent," the court suggested that obligations under the Compulsory Education Law would be considered satisfied by supplementing nonpublic instruction with an Individualized Home Instruction Plan (IHIP).

III. The Future of Substantial Equivalency

The court's decision to strike provisions granting the Education Department the authority to direct the closure of nonpublic schools undercuts its ability to enforce substantial equivalency. However, the provisions struck by the court pertain only to final determinations and closures of nonpublic schools, leaving most of the new regulation intact.

The Education Department is likely to appeal this decision to the Appellate Division for further litigation. In the meantime, LSAs should continue its preliminary efforts to implement the new review process, but consult with counsel before issuing any kind of final determination or implementation of corrective action. If you have any questions or concerns about this decision's impact or regarding substantial equivalency requirements generally, please contact Ryan L. Everhart (716.848.1718) or any other member of the Hodgson Russ Education Practice.

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