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Christina Coughlin
NY Education Department
SORIS
89 Washington Avenue
Room 1075 EBA
Albany, NY 12234

1300 Pennsylvania Ave., NW
#190-433
Washington, DC 20004
844-883-CAPE(tel)
cape@capenet.org
www.capenet.org

CAPE member organizations:

- Agudath Israel of America
American Montessori Society
Association Montessori International-USA
Association of Christian Teachers and Schools
Association of Christian Schools International
Association of Waldorf Schools of N.A.
Christian Schools International
Council of Islamic Schools in North America
Council on Educational Standards and Accountability
Evangelical Lutheran Church in America
Friends Council on Education
Islamic Schools League of America
Jesuit Schools Network
Lutheran Church-Missouri Synod
National Association of Episcopal Schools
National Association of Independent Schools
National Catholic Educational Association
National Christian School Association
Office for Lasallian Education, Christian Brothers Conference
Oral Roberts University Educational Fellowship
Seventh-day Adventist Board of Education
United States Conference of Catholic Bishops
Wisconsin Evangelical Lutheran Synod Schools
Affiliated State Organizations

Re: EDU-27-19-00010-P, Substantially Equivalent Instruction for Nonpublic School Students

Dear Ms. Coughlin and Members of the Board of Regents:

On behalf of CAPE, the Council for American Private Education, I respectfully submit these comments in opposition to the proposed regulations recently published by the New York State Education Department regarding "Substantial Equivalency" - the statutory mandate that a private school student in New York receive instruction that is "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." NY Education Law 3204(2).

CAPE is a coalition of national organizations and state affiliates (including a New York state affiliate) serving private elementary and secondary schools. There are over 33,000 private schools in America. One in four of the nation's schools is a private school. More than five million students attend these schools. CAPE member organizations represent more than 80 percent of private school enrollment nationwide.

Regulating with a Heavy Hand

CAPE is deeply concerned about the proposed new "substantial equivalency" regulations - both in terms of their potentially devastating impact on private schools in New York, and the dangerous precedent they may establish for other states. These regulations are extremely prescriptive and heavy-handed, requiring private schools to teach precisely the same subjects as those required to be taught in the public schools, in some grades for precisely the same number of hours as required to be taught in the public schools. They would require many private schools to totally revamp their school day schedules, in some cases to the point of impinging on the schools' educational mission.

The proposed regulations would empower governmental regulators to

determine the competency of private schools teachers, notwithstanding that New York does not require private schools to hire only licensed teachers. They would further empower local public school officials to sit in judgment on their private school neighbors, despite the obvious potential conflict of interest where those very same officials may be interested in attracting private school students to their public schools.

In short, if these regulations are adopted, they would represent a serious intrusion upon the autonomy of New York's private schools, would inhibit many schools' ability to pursue the educational vision upon which they were founded, and could jeopardize the continued viability of the private school sector.

Substantially Inequivalent

As the Board of Regents surely understands, parents dig deep into their pockets to educate their children in private schools precisely because they want their children to have an educational experience that is substantially *different* from – not substantially *equivalent* to – the experience they would have in public school. Private schools are established to provide a meaningful alternative to public education. They have historically served as laboratories in which innovative educational approaches have been successfully developed, have promoted social and educational diversity, and have made a major contribution to the American education landscape. But they have been able to do so only because the regulatory environment in which these schools operate have allowed maximum flexibility in designing curriculum, hiring teachers, and setting school day schedules.

Limiting and restricting the independence and flexibility that private schools enjoy would have a severe impact on their ability to provide their students with the education they, their students, and their students' parents want them to have. As stated in a recent report by the National Conference of State Legislators, there is concern that “uniform government standards will force all schools, public and private, to teach the same material rather than allow private schools to provide an array of alternative learning environments that offer innovative teaching philosophies and unique school cultures.” <http://www.ncsl.org/research/education/accountability-in-private-school-choice-programs.aspx>

Unprecedented Intrusion

Based on our research and the experience CAPE has had with private schools across the United States, we believe that the proposed regulations would constitute an *unprecedented* level of state interference with the independence of private schools. To put the proposed regulations in context, a review of the statutes and regulations for private schools in all 50 states shows that most states do not require “substantial equivalency” altogether; and that even in those few states where substantial equivalency is required, the statutes and the regulations do not specify in as great detail as New York's proposed regulations exactly how that education must be provided.

For example, New Jersey law requires equivalency of instruction (N.J. Rev. Stat. 18A:38-25), and there are a few subjects (history of the Constitution, accident and fire prevention) required by statute (N.J. Rev. Stat. 18A: 6-2, 6-3), but there are no regulations at all that specify courses, hours of instruction, and the like. Rhode Island law requires substantially equivalent

instruction in core academic areas (RIGL 16-19-2) and some specific subjects such as government (RIGL 16-22-2) and health and physical education (RIGL 16-22-4), but there are no state regulations that specify anything more than that. Alaska law requires comparable instruction (Alaska Stat. 14.30.010(b)(1)), but there are no regulations specifying how that must be implemented. Michigan requires comparable subjects be taught (Mich. Comp. Laws Sec. 380.1561(3)(a)), but the Michigan statute states that while the state board of education is charged with developing a recommended model core curriculum for local school districts, that curriculum is only to be made “available” to nonpublic schools for their consideration in developing their own core curriculum, and does not require nonpublic schools to conform precisely to the state model core curriculum (Mich. Comp. Laws Sec. 380.1278 (1 and 7)). It would thus appear that New York’s proposed regulations go far beyond what other states that do require substantial equivalency of instruction actually specify in their regulations governing curriculum requirements.

It is important to recall that even without overly prescriptive governmental regulation, private schools are already accountable to those who hold ultimate authority over them: their parent bodies. If parents are dissatisfied with the education their child is receiving in a private school, they are perfectly free to vote with their feet and enroll their child in another school. We do not suggest that government should have no oversight responsibility in the context of private schools. But in exercising such responsibility, government must tread lightly, cognizant of the fact that private schools are accountable first and foremost to their parent bodies. The proposed new regulatory scheme in New York seems totally oblivious to that reality.

The Threat to Religious Liberty

CAPE represents virtually the full spectrum of private schools across the United States, and the concerns we have expressed in the preceding paragraphs apply across the board to all private schools. But they apply with special force to faith-based private schools. The U.S. Supreme Court has emphasized “the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children.” Wisconsin v. Yoder, 406 U.S. 205, 302 (1972). When government regulation interferes with the parental right to guide the religious education of their children, by prescriptively imposing onerous secular studies curriculum requirements that would undermine the ability of private religious schools to provide an appropriate religious education to their students, government undermines the fundamental religious liberty interests of parents and their children.

CAPE respectfully opposes the proposed regulations.

Sincerely,



Michael Schuttloffel
Executive Director