



Nonpublic Schools

Guidelines for Determining Equivalency of Instruction in Nonpublic Schools

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Since 1897, the compulsory attendance law in New York State has required all children between the ages of six and sixteen to be provided with a program of instruction, either at a public school or elsewhere. While the compulsory attendance law protects a child's right to be educated, the State has long recognized the right of parents to choose an alternative to the public school. Churches and other groups of people are guaranteed the right to provide educational programs in accordance with their religious beliefs and educational philosophies. Over the years, nonpublic schools have been an integral part of the total educational system of the State.

The object of the compulsory attendance law is to see that children are not left in ignorance, that they receive from some source the instruction that will prepare them for their place in society. If a child attends a nonpublic school or is being educated at home, the board of education of the school district in which the child resides must be assured that the child is receiving instruction which is substantially equivalent to that provided in the public schools. Thus, the board's responsibility is to the children living in the district; it has no direct authority over a nonpublic school.

These guidelines advise that the best way to ensure that every child is adequately served is through open communications and good rapport between public and nonpublic school officials. They are based upon current practices in the field which have proven to be effective. The guidelines also inform parents and school officials of their responsibilities and contain advice to help them work together harmoniously in the best interests of all children.

Questions not covered in the following pages may be referred to Nonpublic School Services, Room 481 Education Building Annex, New York State Education Department, Albany, New York 12234; phone (518) 474-3879.

I. New Schools

The formation of good relationships between nonpublic and public school administrators is a most important and helpful step for both parties. In determining equivalency and in providing requested services to pupils, a good working relationship should lead to fair and equitable treatment. Therefore, the administrator of a new nonpublic school should contact the superintendent of the district in which the nonpublic school is located in the earliest stages of planning. It would be appropriate at the outset for the administrator to describe the goals of the new school, its sponsorship, anticipated date of opening, and grade levels.

Nonpublic schools usually enroll children from a number of districts. It is strongly recommended that the superintendent of schools of the district in which the nonpublic school is located undertake the review to determine equivalency of instruction. Sending districts are encouraged to concur with the judgment of the superintendent and board of education of the district of location in the matter of equivalency.

Within the framework of the Education Law, the local board of education is responsible for assuring that each resident pupil is provided an adequate instructional program. The board usually asks its superintendent of schools to gather the information necessary for determining equivalency. Therefore, the superintendent, as agent for the board of education, deals with the new school. The review of the school's program need not be undertaken solely by the superintendent; the superintendent may wish to ask other educators from public and/or nonpublic schools to assist. It can be helpful to involve a school principal, curriculum director, guidance person, and/or teacher. In some cases, districts combine to form a team for the review; others engage an outside consultant. Superintendents are encouraged to seek the assistance of the District Superintendent in establishing a review team.

A. Responsibilities of Nonpublic School Administrators

All persons involved in planning and opening a new school should notify the Office of Nonpublic School Services office.

The State Education Department urges any person or group which plans to open a new school to notify the superintendent of schools of the public school district in which the school will be located as early as possible that a new school is being planned. Early notification will provide a basis for a good working relationship.

Prior to the opening of a new school, its administrator should invite the superintendent of schools of the district in which the new school is located to visit the facility. An additional visit is recommended once the school is in operation.

The administrator of the new school should also provide the superintendent of schools of the district in which the school is located with the following:

1. assurance that the building is a safe place for children. The best evidence of this comes from fire inspection reports or, in New York City, a certificate of occupancy issued by the Department of Buildings.
2. a list of names of pupils from the district who will be attending the nonpublic school and the names of other districts in which other pupils reside. These lists will provide data to the district so that it can arrange to provide the services to which those pupils are entitled.
3. a copy of the school calendar for the coming year.
4. a list of grade levels and the total enrollment at each grade level.
5. a list of courses and subjects which will be taught at each grade level in the school.
6. a description of the testing program. Since schools are required to administer certain State-mandated tests (see question 13, page 11), these tests should be part of the total program to evaluate pupils. In addition to the periodic State-mandated tests, every school is encouraged to use nationally normed standardized tests. These test results provide the most objective data on pupil achievement.

The new school should show that it plans to instruct pupils in required subjects (see question 24, page 11) and during time periods sufficient to achieve results comparable to those of the public school. Public schools, in order to qualify for maximum State aid, are in session for at least 180 days each school year. While this requirement is not binding on nonpublic schools, the length of the school year and school day in a nonpublic school should approximate that of the public school.

If the new school enrolls pupils from outside the district in which the school is located, the nonpublic school administrator should provide the superintendent of schools of each of the districts which have pupils enrolled in the school with the following:

7. written notification that the new school is opening;
8. a list of the names of pupils from the district who are enrolled in the school; and
9. a copy of the school calendar for the coming year.

Once the superintendent knows about the new school, its location, projected enrollment, and curriculum, there is some basic assurance that its pupils will be provided an opportunity to learn. While it is difficult to review a program before a school opens or even in the early stages of its operation, public school officials need assurance that pupils in a new school are receiving an adequate instructional program. The school will probably need some time to implement all aspects of its

program. Such time for growth and development should be allowed and, as it takes place, public school officials should be made aware of the progress.

The essential element is that public school officials are assured that the children are provided with an appropriate and adequate educational program. Information in the next section will help the superintendent gain this assurance. Educational outcomes, as evidenced by pupil performance on standardized tests, are the best indicators of the quality of a program, but even this standard requires time in order to reflect the impact of a school's program on its pupils.

B. Responsibilities of Public School Superintendents

When a public school superintendent learns that a new school will be established in the district, the superintendent should contact the Nonpublic School Services office. This ensures that the new school will be placed on the Department's mailing list and that the head of a new school will be invited to the annual fall Conference for Administrators of Nonpublic Schools.

The superintendent should meet with the head of the new school, making arrangements to procure the information listed on pages 2 and 3. The superintendent should also arrange to visit the new school prior to its opening or designate another person or persons to make this visit.

Based on the information received from the new nonpublic school and the on-site visit, if the superintendent ascertains that the new nonpublic school is providing substantially equivalent instruction, the superintendent should notify the board in writing and send a copy of this report to the nonpublic school.

Although the board of education is not required to pass a formal resolution if it determines that the nonpublic school's program is satisfactory, this determination should be a matter of record. It is also recommended that at this time the superintendent, where appropriate, inform the District Superintendent of the findings of the review.

If the information received from the new nonpublic school is not satisfactory, the superintendent should discuss deficiencies with the administrator of the nonpublic school and ascertain whether these deficiencies can be overcome in a reasonable amount of time. They should also agree on a schedule for arriving at satisfactory solutions. At any time during the process, the superintendent or the nonpublic school authorities may call upon the Nonpublic School Services office staff. If deficiencies cannot be remedied or if the school is unwilling to make the necessary program changes and, if, in the superintendent's judgment, the program is not substantially equivalent, the superintendent should so notify the board of education.

At the same time, the superintendent should share this information with boards of

education of districts in which pupils attending the nonpublic school live. The superintendent should notify nonpublic school officials of the date on which the board of education will consider the matter of equivalency.

Once a board of education approves a resolution at a public meeting that a nonpublic school is not equivalent, the administrator of the nonpublic school and the parents of pupils attending that school should be notified in writing that the children will be considered truant if they continue to attend that school. Parents should be given a reasonable time in which to transfer their children to either a public school or another nonpublic school. At the end of that time, all transportation, textbooks, and health services should be withdrawn. If parents continue to enroll their children in a nonpublic school whose program has been determined to be not equivalent, they should then be notified that petitions will be filed in Family Court by the public school authorities to the effect that their children are truant.

If the nonpublic school officials and/or parents disagree with the determination of the board of education, they have the right to file an appeal to the Commissioner within 30 days of the board's decision. Information on the appeals process may be obtained from Office of Counsel, Room 116 Education Building, New York State Education Department, Albany, New York 12234.

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II. Follow-up on New Schools

Since time is required for a new school to put into place all aspects of an educational program, it is recommended that a continuing relationship be maintained by public and nonpublic school officials. Also, the superintendent should be assured that pupils are making progress. An objective way to measure progress is through the review of standardized test results. It is recommended that the nonpublic school administrator share such results with the public school superintendent during the first two or three years of the school's existence. It would also be appropriate for the public school superintendent, or a designee, to visit the school annually during this period.

Many new schools add a grade each year as they expand. In such cases, the nonpublic school administrator should furnish the superintendent with information about the instructional program at each additional grade level.

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III. Established Schools

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.

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.

During the period of investigation of equivalency, services to the pupils attending the nonpublic school should continue. Transportation, textbook loans, and health services are to be provided unless and until the board of education of the public school district determines that the program is not equivalent.

If a plan of improvement cannot be designed or if the superintendent judges that the program of instruction continues to be inadequate, the superintendent should notify the board that the nonpublic school program is not equivalent. Subsequent actions are identical to those in the section on new schools.

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IV. Comprehensive Assessment Reports and Equivalency

A Comprehensive Assessment Report (CAR) can be helpful in determining equivalency of instruction. Usually, a nonpublic school should be presumed to provide an equivalent program of instruction if the CAR indicates it is not to be placed under review by the Department.

If a nonpublic school is placed under Department review, that status does not necessarily mean a lack of equivalency nor require such a determination. In such cases, school district officials may wish to review the school's overall curriculum, types of pupils enrolled in the school, pupil performance on standardized tests, and other evaluative measures. School officials also may wish to review the school improvement plan required by the State Education Department.

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V. Registration of Secondary Schools and Equivalency

The Board of Regents registers nonpublic secondary schools based upon a review of the school program; compliance with applicable laws, rules, and regulations; and achievement of certain standards. There is no registration program for elementary schools. The State Education Department strongly encourages every secondary school to become registered. A nonpublic secondary school may apply for registration by writing to Nonpublic School Services, Room 481 EBA, New York State Education Department, Albany, New York 12234. If a nonpublic school is registered, the Department recommends that the board of education of the district in which the nonpublic school is located accept the registration as evidence the nonpublic high school has an equivalent program of instruction.

A nonpublic secondary school may choose not to be registered. Such a choice does not mean that the school program is inadequate. However, a school which is not registered may not administer Regents examinations or award diplomas. In such a case, the board of education must determine equivalency through local review.

Nonpublic secondary schools registered by the Board of Regents are indicated in the publication, [Directory of Nonpublic Schools and Administrators in New York State](#), which is sent annually to all public school superintendents.

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VI. Services to Students

New York State law requires that the school district, upon request of parents, provide transportation; textbooks; dual enrollment programs to pupils attending nonpublic schools; and, upon request of the nonpublic school administrators, health services for pupils at the nonpublic school. The school district must provide services to pupils attending the nonpublic school unless and until such time as the program in the nonpublic school has been determined not to be equivalent to the program offered in the public school.

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Questions and Answers Relating to Determining Equivalency of Instruction in Nonpublic Schools

- 1. When should the person or group opening a new school inform the public school superintendent that a new school is planned?**

This should be done as early as possible in the planning process so the district can plan to provide appropriate services to the children enrolled in the new school.

2. Does the State Education Department require certain building and space standards for nonpublic schools?

No. The State Education Department has no applicable requirements. However, the New York State Uniform Fire Prevention and Building Code does apply to nonpublic schools. Information about the Code may be obtained from:
Division of Housing and Community Development
Building Code Bureau
1 Fordham Plaza
Bronx, NY 10458

3. Are nonpublic schools required to submit fire inspection reports to State or local officials?

Every nonpublic school in the State, except those located in New York City, Buffalo, Rochester, Syracuse and Yonkers, which enrolls more than 6 students in a nursery-kindergarten program or more than 25 students in grades K-12 is required by law to submit a fire inspection report annually to the State Education Department by December 16 of each year. A new school should also give evidence to the public school officials that the school is a safe place for its pupils.

4. If a fire inspection reveals that a nonpublic school building is unsafe, what is the responsibility of the board of education?

The board of education is not responsible for enforcing the provisions of Section 807-a of the Education Law with respect to nonpublic schools. However, in the case of an apparently serious deficiency, the board may take appropriate steps to inform the parents of pupils at the nonpublic school.

5. Must a nonpublic school be in session for 180 days?

No. The 180-day requirement is related to State aid for public schools. The nonpublic school's calendar should approximate that of the public school, but it need not be in session for 180 days.

6. What is the requirement as to the length of a school day in a nonpublic school?

The law does not mandate specific time periods for nonpublic schools but they should provide instruction for approximately the same time required of public schools.
Grades 1-6 = 5 hours daily
Grades 7-12 = 5 1/2 hours daily

7. Must teachers in nonpublic schools be certified?

No. There is no requirement that personnel in nonpublic schools be certified. It is the responsibility of the nonpublic school administrator to hire persons who, in the judgment of the nonpublic school administrator, are qualified in light of the goals and philosophy of the school.

8. What is the responsibility of a nonpublic school with regard to immunization?

Every school is required to abide by the immunization law which requires schools to admit only children whose immunization has been properly documented.

9. Who has the responsibility for overseeing a nonpublic school's compliance with immunization requirements?

This is the responsibility of the county health department or local health officials.

10. What is the responsibility of a nonpublic school for keeping attendance records?

State law requires the principal of every school to maintain attendance records. Attendance records are legal documents.

11. Must attendance reports be submitted to State or local authorities?

Attendance reports need not be submitted to other authorities. However, if a nonpublic school wishes to be reimbursed for recordkeeping, it must submit an AT-6N form to the State Education Department.

12. Must a nonpublic school use State curriculum materials?

No. There is no requirement that these be used, although materials are available to nonpublic schools as they are to public schools.

13. Which tests are nonpublic schools required to administer?

All schools in New York State must administer Pupil Evaluation Program (PEP) tests and Program Evaluation Tests (PET).

PEP:

3rd grade reading and mathematics

5th grade writing

6th grade reading and mathematics

PET:

4th grade science

6th grade social studies

8th grade social studies

Also, schools must administer Preliminary Competency Tests to pupils in reading and writing in 8th or 9th grades or use other acceptable measures to assure that their pupils meet the standards of the Regents Competency Testing Program.

In addition, Regents Competency Tests or their equivalent must be administered in the following subjects before the end of grade 12:

- reading,
- writing,
- mathematics,
- science,
- global studies, and
- United States history and government

More detailed information is available from the Educational Testing, Room 773 Education Building Annex, New York State Education Department, Albany, New York 12234.

It is recommended that nonpublic schools also administer nationally normed standardized tests.

14. If a school does not administer the tests noted in question 13, is it providing equivalent instruction?

The fact that a school does not administer these tests is not evidence of lack of an equivalent program, but it does make it more difficult to judge. If it does not administer State-mandated tests, a nonpublic school may not receive reimbursement from the State for this mandated service.

15. Is the superintendent of the public school district entitled to access to the test results of pupils attending a nonpublic school?

No. But since test results are the most objective way to judge a program, it is recommended that the nonpublic school provide this information to the superintendent upon request.

16. Must a nonpublic school have a physical education program?

Yes. A nonpublic school is required to provide a physical education program which is similar to that offered in the public school for each pupil.

17. Must a nonpublic school have a gymnasium or other physical education facilities?

No. There are no specific facilities required, but a program of instruction must be provided for every pupil.

18. Is a nonpublic school required to have a guidance program?

Commissioner's Regulations require a guidance program in grades 7-12 in nonpublic schools.

19. Which components are required in the guidance program?

Commissioner's Regulations do not specify components. The nature and type of the guidance program is left to the discretion of the nonpublic school.

20. Must a nonpublic school employ a certified guidance counselor?

No.

21. What are the requirements for a library in a nonpublic school?

Every school must establish and maintain a school library which meets the needs of its pupils and provides an adequate complement to the instructional program.

22. What is the responsibility of the board of education for pupils under the age of 6 or over the age of 16?

Since these pupils are not of compulsory attendance age, the board has no responsibility for their attendance upon instruction, except in districts in which the board has the authority to extend the compulsory attendance age to 17 years.

23. At what point is a district obligated to provide services to pupils attending a nonpublic school?

The district must provide services from the beginning of the school year. Services should continue unless and until the board of education determines that the program is not substantially equivalent. Information about these services is available from the Nonpublic School Services office.

24. What subjects must be taught in nonpublic schools?

In grades 1-6 the following subjects must be taught:

- arithmetic
- English language
- reading
- spelling
- writing
- music
- geography
- health education

- physical education
- science
- United States history
- New York State history
- visual arts

In grades 7 and 8 the following subjects must be taught:

- English
- social studies
- science
- mathematics
- physical education
- health education
- New York State history
- visual arts
- music
- practical arts
- technology education
- home and career skills
- library and information skills

A high school four-year course of study must include the following units of work or their equivalent:

- English - 4 units
- social studies, including a year of American history - 4 units
- mathematics - 2 units
- science - 2 units
- health - 1/2 unit
- physical education
- art and/or music - 1 unit

In addition to the preceding, instruction must be provided in:

- physical education and kindred subjects
- alcohol, drug, and tobacco abuse
- highway safety and traffic regulation, bicycle safety
- school safety patrol
- fire drills
- arson and fire prevention

More information on course requirements is found in Part 100 of Commissioner's Regulations.

25. Must the superintendent visit each nonpublic school annually?

No. There is no requirement that the superintendent make annual visits. However, it is recommended that the superintendent visit a new school annually for the first two or three years of its operation. This will enable the superintendent to become acquainted with school officials and knowledgeable about its program.

26. Is a superintendent required to maintain records on nonpublic schools?

While there is no legal requirement to maintain specific records on nonpublic schools, it is helpful for both public and nonpublic school administrators for the superintendent to keep a record of reports, correspondence, and visits related to the determination of equivalency. All official action of a board of education is a matter of record.

27. Does the board of education have the responsibility to see that the nonpublic school files appropriate reports with the State Education Department?

No. The board of education has no responsibility in this matter.

28. If a high school chooses not to be registered, who has the responsibility to notify parents and pupils it enrolls that the school is not registered by the Board of Regents and is not authorized to issue diplomas?

Nonpublic school authorities have a serious responsibility to notify parents of its pupils that the school is not registered by the Board of Regents and is not authorized to issue diplomas.

29. What are the responsibilities of the District Superintendent in relating to a nonpublic school?

As a representative of the State Education Department, the District Superintendent should be of service to school districts and nonpublic schools experiencing difficulty in determining equivalency of instruction or in providing services to pupils attending nonpublic schools. The District Superintendent should help in mediating any difficulties and in providing information to both public and nonpublic school administrators.

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Attachment A: State Education Department Resources

Appeals to the Commissioner:

Office of Counsel
Room 116 Education Building

New York State Education Department
Albany, New York 12234
(518) 474-6400

Fire Inspection and Transportation:

Educational Facilities Planning
Room 1060 Education Building Annex
New York State Education Department
Albany, New York 12230
(518) 474-3906

Health Services:

Pupil Health and Fitness
Room 319 Education Building
New York State Education Department
Albany, New York 12234
(518) 486-6090

Registration:

Nonpublic School Services
Room 481 Education Building Annex
New York State Education Department
Albany, New York 12234
(518) 474-3879

Textbooks:

Educational Finance
Room 507 Education Building
New York State Education Department
Albany, New York 12234
(518) 474-2977

Testing:

Educational Testing
Room 773 Education Building Annex
New York State Education Department
Albany, New York 12234
(518) 474-5902

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Attachment B: Legal References

Academic Records:

Education Law, Section 207
Commissioner's Regulation, Section 104.2

Attendance Records:

Education Law, Section 3211
Commissioner's Regulation, Section 104.1

Compulsory Attendance:

Education Law, Section 3201
Education Law, Section 3204
Education Law, Section 3205
Education Law, Section 3210

Dual Enrollment:

Education Law, Section 3602-c

Fire Inspection and Fire Drills:

Education Law, Section 807
Education Law, Section 807-a

Health and Immunization:

Public Health Law, Section 2164
Education Law, Section 912
Commissioner's Regulation, Section 136.3
Commissioner's Decision #8287, June 1971
Commissioner's Decision #10913, September 1982

Length of School Year and School Day:

Education Law, Section 3604
Commissioner's Regulation, Section 175.5

Registration of Secondary Schools:

Commissioner's Regulation, Section 100.2(p)

Subject of Instruction:

Education Law, Section 803
Education Law, Section 804-806
Education Law, Section 808
Education Law, Section 3204
Commissioner's Regulation, Section 100

Testing:

Commissioner's Regulation, Section 100
Commissioner's Regulation, Section 102

Textbooks:

Education Law, Section 701
Commissioner's Decision 9189, January 1976
Commissioner's Decision 11,618, April 1986

Transportation:

Education Law, Section 3635