

The Case for Independence

Registration versus Substantial Equivalency



**A Special Report by Tom Stiles
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New York Association of Christian Schools

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I. Introduction of Registration versus Substantial Equivalency

A. Development of Christian Schools in New York

B. Definition of Terms

1. Compulsory Education

2. Substantial Equivalency

3. Registered

4. Accredited

II. Implications of Substantial Equivalency

A. Our Christian Schools are Legal

B. Our Christian Schools face some Limitations

C. Our Schools Enjoy Liberty

III. Impact of Registration

A. Philosophy

B. Program

C. Policies

D. Product

Conclusion

I. Introduction of Registration versus Substantial Equivalency

A. Development of Christian Schools in New York

Education is the primary responsibility of parents.

Up until 1833, when a public school system was established which was non-sectarian in nature, most schools in this country were established and run by churches.

With the establishment of public schools only a “common Christianity” was to be taught. In spite of this noble intention, schools still ended up having a definite Protestant bent, and grew to be sectarian in nature. In some areas, Jewish schools also existed. The wave of Catholic immigration of the 19th Century led to conflicts and the formation of Catholic Schools. Protestants saw the public schools as a form of “parallel education” in which a “common Christianity” could be imparted to all individuals while the specifics were left up to the different churches to address.

For the first two hundred years of American history, Christians saw no need to break away from the public schools to form their own schools.

Then came the 1960's

In 1962 and 1963, public prayers and compulsory Bible reading were prohibited by the U. S. Supreme Court. In the case of prayer, the New York Board of Regents had prescribed a prayer to be said before the start of each day's classes in the public schools of New York to promote good moral character, provide spiritual training, and help combat juvenile delinquency. The prayer was non-sectarian and stated:

*“Almighty God,
We acknowledge our dependence upon thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country.”*

Justice Hugo Black wrote the following for the majority, "It is no part of the business of government to compose official prayers... the Regent's prayer is inconsistent both with the purposes of the Establishment Clause and the Establishment Clause itself."

In 1963, the U. S. Supreme Court ruled 8 to 1 to ban all school prayers and public Bible reading (Murray v. Curlett).

Although many Christians had been unhappy with the public schools due to the increasing teaching of evolution rather than creation, these two court cases were seen as the “final straw that broke the camel's back” leaving the door wide open for secular humanism

As a result, **the 1970's and 1980's** saw an explosion of Christian Schools being established – mostly by local churches. New publishing companies also sprang up to meet the need of these schools for a Christian curriculum (ACE, A Beka Press, BJU Press, etc.)

I personally started a Christian School in Michigan during this time period (Otsego Baptist Academy established in 1980). During the first few months, we were contacted and/or inspected by the Michigan Department of Education, the County and State Health Departments, and the Michigan State Police (Fire Marshalls). At the same time, the Michigan Department of Education took two Christian Schools into court as a test case of their requirement of certified teachers (the state lost).

In New York, these Church versus State battles were avoided. This was due to long tradition of non-public schools existing in New York, the recognition by the State Department of Education of the legal right of parents to place their children in independent and religious schools, and the leadership of the New York Association of Christian Schools. Men like **Rev. Duane Motley** and **Rev. Carl Bish** worked with the Department and other State officials, to settle differences and establish policies that insure that churches can open and operate a Christian school without government interference. We owe a great debt to these men.

According to the NYSED,

- Today 15 % of all children school age in New York State (approximately 500,000) attend 2,400 non-public schools.
- 30,000 children are home instructed by their parents. [I believe the number is actually MUCH higher]

B. Definition of Terms

- 1. Compulsory Attendance:** The New York State Department of Education’s “Guidelines for Determining Equivalence of Instruction in Non-Public Schools notes:

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, temples, mosques, 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.

Notice that they list two fundamental rights:

a. “The right of parents to choose an alternative to the public schools” and

b. The right of “Churches...to provide educational programs in accordance with their religious beliefs and educational philosophies.”

The NYSED also states:

“The object of the compulsory attendance law is to see that children are not left in ignorance, that they receive from some source instruction that will prepare them for their place in society.”

2. Substantial Equivalency

“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.**’ (ibid).

The guidelines were established to meet this goal in the least intrusive means possible. Essentially, a new school is required to write a letter to the local public school

superintendent informing him/her of their intention to begin a new school, and submit 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.

Once this material has been received and reviewed by the Superintendent, he should make a formal resolution deeming the new school “substantially equivalent.” The Guidelines note that “Although the board of education is not required to pass a formal resolution if it determines that the non-public school’s program is satisfactory, this determination should be a matter of record (ibid).” The new school is informed of this decision by “a letter of substantial equivalency.”

It should be noted that this system has worked well – although public school superintendents usually have not received any training concerning nonpublic schools, and so usually need help with this process.

3. **Registration** – “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.” 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 (ibid).”

The high school registration program involves the submission of information by a nonpublic school and an on-site visit to the school by a staff member in the Department's Bureau of School Registration. The basic standard for registration is that 85% of the seniors enrolled in October of their senior year meet competency requirements by the following June and, further, that the school demonstrate a retention rate at least 90% in the year prior to registration. In addition, every school must comply with applicable laws, rules and regulations. Registered nonpublic secondary schools are reviewed on a ten-year cycle. Every secondary school is encouraged to become registered. For more details go to:

<http://www.p12.nysed.gov/part100/pages/1002.html#z> (NYSED /P-12/ Part 100 Regulations/100.2 General School Requirements).

Registration brings a school into the University of the State of New York system – or under the control of the Board of Regents and the State Department of Education.

Registration is not permanent – each school is subject to review by the SED and Board of Regents.

NOTE: The bottom line is control.

4. **Accreditation** is often misunderstood, especially here in New York State. Accreditation is a process whereby a school is evaluated and approved by an outside agency, such as Middle States

Association of Colleges and Schools or the New York Association of Independent Schools. The State of New York does not “accredit” any school. Parents and some college administrators will sometimes ask, “*Is your school accredited by the State?*” The answer is “No, we are not, and neither are public schools.”

II. Implications of Substantial Equivalency

A. Our Christian Schools are Legal

The member schools of the New York Association of Christian Schools have all been deemed to be “*substantially equivalent*” by their local boards of education. They meet and exceed all legal requirements of the State of New York.

They choose not be “registered with the state” because of strongly held religious convictions related to the separation of church and state.

The State of New York recognizes this, as their legal right, and does not consider such schools as components of the University of the State of New York.

It also should be noted that our graduates meet and exceed all course requirements set for public schools.

B. Our Christian Schools face some Limitations

1. The Diploma Issue:

Since early in the 1990’s, the New York State Department of Education insists that “Only those public and nonpublic high schools which are registered by the Board of Regents upon recommendation of the commissioner, may issue diplomas and administer Regents examinations.” (Part 100.2 9ps) - Regulations of the Commissioner.

The NYACS Board of Directors disagrees and has attempted to get this changed. On February 14, 2000 they met with then Commissioner Mills and his Deputy Commission, Mr. Kadamus to discuss this issue. The Board was assured that their schools are legal, that registration is voluntary, and that their schools could graduate students and give a “certificated of graduation,” but that they could not use the word “diploma.” To justify their position, they cited State Education Law 224.2 which states:

No person shall buy, sell or fraudulently or illegally make or alter, give, issue or obtain or attempt to obtain by fraudulent means any diploma, certificate or other instrument purporting to confer any literary, scientific, professional or other degree, or to constitute any license, or a duplicate thereof, or any certificate of registration, or to certify to the completion in whole or in part of any course of study in any university, college, academy or other educational institution.

But this law primarily refers to colleges, and variously uses the terms *credential, degree, certificate, and instrument purporting to confer any...degree, or... license, or...certificate of registration* in conjunction with the word *diploma*, obviously using the term in a loose and non-proprietary manner.

We contend that the wording of this law is so vague as to make its application to Christian day schools tenuous at best. Furthermore, the wording of the law prohibits the conferring of “diploma or degree” except by “a regularly organized institution of learning meeting all requirements of law and of the university”. Since there are no requirements of the university applicable to the

unregistered schools, and since the unregistered schools of NYACS are “regularly organized” and meet the “requirements of law”, they are not prohibited by law from calling their certificate of graduation a “*diploma*.”

We conclude:

- Unregistered schools that have been legally constituted in New York State have the right to graduate students who have met all requirements determined by law and by their governing bodies. Such graduations are legitimate, and schools have the right to issue a document to the graduate as a token and symbol of his/her accomplishment.
- There is no known law that clearly defines the term *diploma* or declares it to be a proprietary or protected term. There is no known law that clearly prohibits unregistered schools from labeling their graduation documents *diplomas*, as long as they are not issued in the name of the State of New York, the State Education Department, or under the seal of the Board of Regents.
- Our schools meet the rule of law by being adjudged “substantially equivalent” by the local school superintendent. If we legally exist as “substantially equivalent” schools, there is no reason we can not give a “substantially equivalent” diploma.

Although the State Department of Education has not changed its position, we have not had any legal problem with the issuance of diplomas. In fact, NYACS has had a representative on the Commissioner’s Non-public Schools Advisory Board for over 20 years. When Rev. Duane Motley was on this Board, he annually showed the Commissioner samples of the diplomas from our member schools. Dr. Roger Ellison now serves as our representative on this advisory board.

2. College Entrance

The growth of the home-school movement created another headache for our Christian schools. A few years ago, the Comptroller audited the records of SUNY-Stony Brook and discovered that a senior had been home-school and did not have a “valid diploma.” This led to a review of entrance requirements for all SUNY and CUNY schools by the Board of Regents. After much study, they changed their **Regulations**:

Section 3.47 (a) as amended, established the general requirements that a candidate must meet to earn a college degree in New York, including preliminary education requirements that must be met before a degree may be awarded. You should note:

- A. Students are not required to demonstrate completion of a four-Year high school course or its Equivalent BEFORE beginning college degree study. The old regulations requiring “satisfactory evidence of a preliminary education of at least a four-year high school or its equivalent” was removed by the Board of Regents.
- B. Students do have to demonstrate that they received acceptable preliminary education before they can be awarded a college degree. The Board of Regents gives six possible ways this can be done:

Holding a high school diploma; or

- i. Having completed the substantial equivalent of a four-year high school course, as certified by the Superintendent of Schools or comparable chief school administrator; or
- ii. Holding a High School Equivalency Diploma; or

- iii. Completing 24 semester hours or the equivalent as a recognized candidate for a college-level degree or certificate at a degree-granting institution, as defined in the regulation (6 semester hours or the equivalent in English Language Arts including writing, speaking and reading (literature), 3 semester hours or the equivalent in Mathematics, 3 semester hours or the equivalent in Natural Sciences, 3 semester hours or the equivalent in Social Sciences, 3 semester hours or the equivalent in Humanities, and 6 semester hours or the equivalent in any other courses within the registered degree or certificate program); or
- iv. Having previously earned and been granted a degree from a degree-granting institution, as defined in the regulation; or
- v. Having passed and completed all requirements for the following five Regents examinations or approved alternative assessments for these examinations: the Regents Comprehensive Examination in English, the Regents examination in mathematics, the Regents examination in United States history and government, a Regents examination in science, and the Regents examination in global history and geography. -- Regulations of the Regents

This was designed for home-school graduates to demonstrate the validity of their diplomas, but has been applied to non-registered school graduates too.

When Tom Hogan was the director of the Non-Public Schools Office of the SED, he helped us get a student accepted by writing a letter explaining “accreditation, registration, and substantial equivalency.” He assured the college or university that the member school was **“a school recognized” by the Department of Education.**

A few years ago, Dr. Roger Ellison and I met with Dr. Deborah Cunningham and two members of her staff. Her office (Operations and Management Services) is covering the Non-Public Schools Office temporary. The meeting was very cordial. We introduced them to the New York Association of Christian Schools, described the good relationship we enjoyed with the Office of Non-Public Schools, and discussed the challenges (diplomas and college entrance). Although she did not have the authority to change the official position of the SED, she and her staff seemed sympathetic. We asked her and the SED to respond to questions about our schools as being “recognized by the SED.” She asked if our schools have a BEDS number (attendance), our response was “yes.” “Then the SED does recognize your schools.”

On March 19, 2013, Dr. Ellison, Pastor Mark Kelly, and I met with the new administrators in the NYS Department of Education Office for Operations and General Services (Dr. Christina Coughlin and Dr. Shelley Drazen). They confirmed that registration is voluntary, and that they will continue to “recognize” our unregistered schools if they have a BEDS number.

NOTE: This is a challenge solely involving SUNY and CUNY schools. We have never had a student rejected from an out-of-state college because he/she graduated from one of our member schools. There have some other challenges to our diplomas by various employers, but these are generally cleared up with a letter from NYACS.

3. **Regents Examinations** – “Only those public and nonpublic high schools which are registered by the Board of Regents upon recommendation of the commissioner, may issue diplomas and administer Regents examinations.” (Part 100.2 9ps) - Regulations of the Commissioner.

To graduate from a public school in New York, a student must complete the required courses, and pass five Regents Exams with a score of 65 percent or higher: integrated Algebra (or Math A), Global History and Geography, U.S. History and Government, Comprehensive English, and

any one science regents. To receive an Advanced Regents Diploma, students must also pass an additional Regents science exam, (Earth Science, Chemistry, or Physics), an additional math exam (Geometry, Algebra 2/ Trigonometry, or Math B), and a foreign language exam.

This limitation does cause some confusion and conflict with SUNY and CUNY schools, but is not been a problem with other colleges.

C. Our Schools enjoy Liberty

“Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage.” -- Galatians 5:1

As we noted before, the State Department of Education recognizes that the local school board of education “has no direct authority over a non-public school.”

And since our schools are not registered and not a part of the University of the State of New York system, our schools are not under the authority of either the Board of Regents or the State Department of Education.

Furthermore, the Court has ruled that the Commissioner of Education and the Board of Regents “do not have police authority” (Packer Collegiate Institute v. the State of New York, 1948).

We, therefore, enjoy the freedom to direct our schools as we see fit. We are accountable to God, our parents, and students –not the State.

For example, Rev. Duane Motley reported to the NYACS Board frequently, that the Commissioner had introduced some new changes or mandates at the last advisory Board meeting. After listening, he would politely ask: “What happens if our schools don’t do that?” The response was usually, “You will lose your state aid.” Since our schools don’t take any state aid, it was an empty threat.

NOTE: This is not true for registered schools. By registering they placed themselves under that authority of the State, and are obligated to obey every rule and regulation (mandates). It is also not true for schools that accept State or Federal aid – such money brings with it chains.

III. Impact of Registration

*“...Render therefore unto Caesar the things which are Caesar's;
and unto God the things that are God's.” -- Matthew 22:21*

Although SED officials assure us that registration will not infringe on our religious freedom, we remain skeptical. Registration brings a school into the University of the State of New York system.

Wikipedia gives the following explanation of the University of the State of New York.

The **University of the State of New York** (USNY) was established by the State in 1784, and is the State of New York’s governmental umbrella organization responsible for most institutions and people in any way connected with formal educational functions, public and private, in New York State. The "university" is not an educational institution in the usual sense: it is, in fact, a licensing and accreditation body that sets standards for

schools from pre-kindergarten through professional and graduate schools, as well as for the practice of a wide variety of professions [This does not include high schools, since the State does not “accredit” any high school]

The Board of Regents oversees USNY. The Board includes 16 members elected by the New York State Legislature for five-year terms. Twelve of the Regents represent the State's 12 judicial districts (one appointed from each district), and four are at-large. The Regents serve without salary. The New York State Constitution and state education law make the Regents the head of the New York State Education Department. They select a Commissioner of Education, who runs the Education Department and is president – that is, chief executive officer – of the University. The Board of Regents also elects a chancellor, who presides over the Regent’s meetings and appoints its committees.

USNY, through its Board of Regents, generally uses NYSED as a vehicle to carry out policy created by the Regents. In other words, USNY’s Board of Regents generally creates policy, whereas NYSED generally administers policy. The New York State Legislature can also create some education policy; such statutory education policy would become official education policy that the Commissioner of Education would also be responsible for administering.

NOTE: This arrangement is unique to New York. In other states, the Education Department is usually a part of the Executive Branch of the state government. New York governors have no direct control over education in the State. They do submit the State Budget, however, which includes the operating budget of the SED. The budget must be approved by the Legislature, so the Governor’s control is limited.

Last year the Board of Regents selected Dr. David Steiner to replace the retiring Richard Mills as Commissioner of Education. Commissioner Mills made many changes during his years of service, including the requirement that all high school graduates take and pass the 5 Regents Exams (which was later modified). Commissioner Steiner can be expected to make other changes – some may be major. Changes can also come from the Board of Regents and the State Legislature.

Registered schools will be required to accept these changes, or lose their registration (*what the state giveth, it can take away*).

Although our private schools enjoy a cordial relationship with the State now, that could change radically very quickly. For example, last year the Legislature passed the Dignity for All Students Act. This bill changes Education Law “prohibiting discrimination against any student based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.” There are two areas of concern: (1) real or perceived sexual orientation; and (2) real or perceived gender (or gender expression). Does this mean that a student cannot be denied admittance due to his “sexual orientation” or “gender expression?”

In addition to this conflict, registration can impact the following areas of Christian school.

A. Philosophy – A Christian school exists to assist parents in their God-given responsibility to train their children in the nurture and admonition of the Lord. It is accountable to God and to the parents; and since our schools are ministries of local churches to the members of the church. This is biblical since God gives this responsibility to educate children to parents (Deuteronomy 6:1-7; Proverbs 22:6 and Ephesians 6:1-4) and to the church (Matthew 28:18-20). He did not give this responsibility to the State (Romans 13 gives the basic responsibility of the State – punish evil; promote good; and protect the innocent).

The impact on philosophy can also include the content of instruction. For example, UNYS controls the State Museum which regularly promotes evolution. The Regents Examinations already include questions about evolution.

Question: Who controls the content of curriculum in your Christian school?

B. Program – An unregistered Christian school is free to design its own program, but a registered Christian School must meet the demands of the State. The requirement of taking the Regents Examinations for graduation causes schools to modify their program –to teach for the test, for example.

Question: What other ministry of your church would you be willing to turn over to the State?

C. Policies – the policies and practices of a non-registered Christian school are based on the Word of God (our final authority for faith and practice). The policies and practices required by the State are based on the whim of man. *Dignity for All Students* is good example of this – The Christian calls sexual perversion a sin, while the world calls it “an acceptable life style.”

Question: What do you do when your convictions conflict with State regulations?

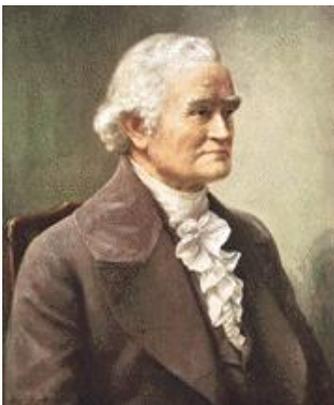
D. Product – it has rightly been said that public schools teach students how to make a living, while Christian schools teach students how to live. It may sound judgmental – but my observation is that registered Christian schools produce worldly Christians. I believe this is true, because such schools are forced to “tone down” their Christian convictions.

Question: What is the product of your Christian School?

Conclusion: Although there are some challenges, the current system of our Christian schools being deemed to be “substantially equivalent” by the local Board of Education, has worked well. It satisfies the genuine state interest (children are being educated), without restricting our religious liberty. Registration is a form of licensing, puts the Christian school under the supervision of the State Department of Education, and brings too many risks.

I conclude, therefore, that there is no good reason for a Christian school to seek “registration.” The price is simply too high.

Public Education Then



"In my view, the Christian religion is the most important and one of the first things in which all children, under a free government ought to be instructed...No truth is more evident to my mind than that the Christian religion must be the basis of any government intended to secure the rights and privileges of a free people."

--**Noah Webster**, “Father of American Education” Source: 1828, in the preface to his *American Dictionary of the English Language*



“I proceed...to inquire what mode of education shall we adopt so as to secure the state all the advantages that are to be derived from the proper instruction of the youth; and here I beg you leave to remark that the only foundation for a useful education in a republic is to be laid on the foundation of religion. Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life all republican governments.”

He continued to identify what religion he was talking about:

But the religion I mean to recommend in this place is that of the New Testament...Its doctrines and precepts are calculated to promote the happiness of society and the safety and well-being of civil government.”

Dr. Benjamin Rush, leader in the American Revolution

Father of American Medicine

Source – Thoughts Upon the Mode of Education Proper in a Republic - 1786

Public Education Now

Humanism asserts that the nature of the universe depicted by modern science makes unacceptable any supernatural or cosmic guarantees of human values. Obviously humanism does not deny the possibility of realities as yet undiscovered, but it does insist that the way to determine the existence and value of any and all realities is by means of intelligent inquiry and by the assessment of their relations to human needs. Religion must formulate its hopes and plans in the light of the scientific spirit and method.

We are convinced that the time has passed for theism, deism, modernism, and the several varieties of "new thought."



William James – the Father of Progressive Education
Articles 5 & 6 of the Humanist Manifesto