



NEW YORK
CITY BAR

**COMMITTEE ON
EDUCATION & THE LAW**

REBECCA BERKEBILE
CO-CHAIR
rebecca.berkebile@mountsinai.org

JOHNATHAN GLATER
CO-CHAIR
glater@berkeley.edu

February 22, 2023

Hon. Eric Adams
Mayor of the City of New York
City Hall
New York, NY 10007

Chancellor David Banks
New York City Department of Education
52 Chambers St.
Room 320
New York, NY 10007-1222

**Re: New York City Department of Education’s oversight of the adequacy of education
in private and religious schools**

Dear Mayor Adams and Chancellor Banks,

We are writing on behalf of the Education and the Law Committee of the New York City Bar Association¹ concerning the New York City Department of Education’s (NYCDOE) oversight of the adequacy of education in private and religious schools.

New York State Education Law §3204(2) provides “Instruction given to a minor elsewhere than at a public school shall be 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

¹ The Education and the Law Committee consists of legal practitioners and academic experts in education policy and practice. The Committee addresses the full range of legal issues surrounding education from pre-K through higher education, including education finance, governance, legislative proposals, and special education.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

resides.” While the focus of much of the discussion around this provision has been on certain religious schools, we think it is important to emphasize that the law applies to all nonpublic schools.

In response to complaints of educational inadequacy at certain nonpublic schools, the New York State Board of Regents recently adopted new regulations designed to implement the Substantial Equivalency Law (“Regulations”) effective September 28, 2022.² These Regulations provide that local school authorities (LSAs), including the NYCDOE, are tasked with making substantial equivalency determinations for all nonpublic schools within their geographical borders. Unfortunately, many of the individual enforcement provisions in the Regulations are not effective until December 1, 2024. The deficiencies addressed by the Regulations require a far more urgent response, particularly given the pandemic’s negative impacts on student learning. We therefore urge more immediate action to protect the basic educational rights of New York City children.

On October 6, 2022, the New York State Education Commissioner, Betty Rosa, ruled that a large school in Brooklyn failed to provide a basic secular education.³ In the order, the Commissioner instructed the school and the NYCDOE to jointly draft a plan within 60 days aimed at reaching “equivalency,” and to set a remediation timeline that does not extend beyond the end of the 2023-24 school year.

We agree with this approach of schools working with the NYCDOE to remediate inadequate educational opportunities and urge the City not to allow educational inadequacy to continue unchecked until December 1, 2024, the effective date of the Regulations. Correction should not, and cannot, wait for two years. The NYCDOE must do its most important job and immediately secure equal educational opportunities for all New York City schoolchildren.

We respectfully recommend that the NYCDOE:

1. Act swiftly to investigate substantial claims of inadequate education in any school.
2. Conduct all investigations transparently, and issue public reports describing the findings.
3. Specify, and follow through on, concrete repercussions for schools that do not cooperate in investigations. Uncooperative schools should not be permitted to stall investigations.
4. Given how politically fraught investigations of inadequate education have been in past years, appoint an independent investigation team to oversee this investigation process (akin to a special master process).
5. Encourage documented self-monitoring and supervision by agreed upon authorities, such as the New York State Association of Independent Schools (NYSAIS).

² Volume XLIV NYS Reg. p. 39-42.

³ *In the Matter of Yeshiva Mesivta Arugath Habosem* regarding substantial equivalence, 10.6.22.

Thank you for your attention to this matter. We would be happy to discuss these issues and our recommendations further if that would be helpful to you. Please feel free to reach out to us at the contact information provided above.

Respectfully,

Rebecca Berkebile

Rebecca Berkebile, Co-Chair
Education and Law Committee

Jonathan Glater

Jonathan Glater, Co-Chair
Education and Law Committee

Cc: Hon. Rita Joseph, Chair, NYC Council Education Committee