

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

A.B. and C.D. by their parent and next friend, JANE ROE,
E.F. by his parent and next friend, JOHN DOE, and I.J., on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

KATHY HOCHUL as Governor of the State of New York,
CARL HEASTIE, as Speaker of the New York State
Assembly, ANDREA STEWART-COUSINS, as Majority
Leader of the New York State Senate and the STATE OF
NEW YORK,

Defendants.

COMPLAINT

INDEX NO.

PRELIMINARY STATEMENT

1. This action is being brought to compel the State of New York to ensure that the plaintiff children and all other similarly situated children attending ultra-Orthodox nonpublic schools in the State of New York receive the opportunity for the sound basic education guaranteed to them by NY Constitution, article XI, § 1 and the “substantially equivalent education” guaranteed to them by Education Law §§ 3204 and 801.

2. Parents may meet their obligations under the compulsory education laws by sending their children to nonpublic schools. These schools may provide instruction in whatever religious or other values the parents prefer, but at the same time, the State has the authority to ensure that “studies plainly essential to good citizenship must be taught, and that nothing be

taught which is manifestly inimical to the public welfare” (*Pierce v Society of Sisters*, 268 US 510, 534 [1925]).

3. Consistent with this authority, New York State has adopted the above-cited statutory provisions to ensure that, in addition to whatever religious or other studies a nonpublic school may choose to provide to its students, it also provides instruction in basic subjects like English, math, science, social studies and civics in order to ensure that all students throughout the state will be prepared to function productively as civic participants in our democratic society.

4. The above-cited substantially equivalent education laws require that students enrolled in nonpublic schools receive instruction in core subject areas that is comparable to that offered in public schools. They have been in effect in New York State for more than 135 years, but the State has only actively enforced them for the past decade, and during this time, it has only partially enforced them.

5. Active enforcement was triggered by a complaint brought to the attention of state and local officials and to the press. Specifically, in 2015, a number of former students, teachers, and parents of current students attending ultra-Orthodox Jewish nonpublic schools (ultra-Orthodox Yeshivas) sent a letter to public officials (the 2015 Non-Compliance Letter) outlining their concerns about the deficient education being provided by 39 such Yeshivas. The essence of those concerns was that

“Generally speaking, at the listed Yeshivas, English and mathematics are taught from around age 7 to age 13 for an average combined time of only 90 minutes and on only four days a week. Other secular subjects are not taught at all, let alone taught in English. At these Yeshivas, English instruction for boys stops at age 13. Girls generally receive a better secular education than do boys but we are still concerned that it is not sufficient to prepare them for their futures.”

6. Most ultra-Orthodox Yeshivas do not award their graduates a high school diploma. The average yeshiva graduate speaks little or no English, has few or no marketable

skills, earns a household income well below the average income in New York State, marries young and has many children, and relies upon public assistance to support his large family.

7. In the United States and elsewhere, many “modern” orthodox Jewish schools, unlike the ultra-Orthodox Yeshivas, provide strong secular instruction while maintaining a rich tradition of rigorous religious study. In New York State, most of these schools are accredited and issue Regents diplomas.

8. The educational deficiencies in the ultra-Orthodox Yeshivas are of concern not only to the students involved but also to society at large because students at these schools receive no education whatsoever in civics and other subjects that will prepare them to function productively as civic participants and as capable voters. Despite their total lack of knowledge of American history, civics, and public policy issues, large percentages of the members of these ultra-Orthodox communities vote as a bloc in local, state, and national elections and thereby have substantial influence over the formulation of public policies.

9. The state education department (SED) and the New York City Department of Education (DOE) have investigated the substantial equivalence status of 28 ultra-Orthodox Yeshivas listed in the 2015 Non-Compliance Letter. They have determined that at least 21 of the 28 schools (75%) are not in compliance with substantial equivalence requirements. The substantial equivalence status of hundreds of other ultra-Orthodox Yeshivas in New York City and other parts of the state still have not been investigated.

10. In 2022, the SED enacted an extensive set of regulations concerning the procedures for enforcing the substantial equivalence laws.

11. Over the past three years, defendant Governor Hochul and the legislature have substantially impaired effective implementation of the substantial equivalence laws and of SED’s

guidelines and regulations by enacting amendments to the applicable statutes. These amendments are arbitrary, capricious, unreasonably vague, and in violation of the sound basic education requirements of NY Constitution, article XI, § 1. Most of the provisions of these amendments have been designed, on their face and as applied, solely to benefit ultra-Orthodox Yeshivas and not other nonpublic schools.

12. Plaintiffs have brought this action on behalf of themselves and on behalf of a class of approximately 100,000 students who are currently enrolled in, or recently attended, ultra-Orthodox Yeshivas who are not receiving or did not receive the opportunity for a sound basic education and a substantially equivalent education that will prepare them to function productively as civic participants.

PARTIES

13. A.B., a minor represented by his parent, Jane Roe, is an 11-year-old boy who resides in Kings County, New York. A.B. currently is in the 6th grade at an ultra-Orthodox Yeshiva in Kings County. Previously, he also attended an elementary ultra-Orthodox Yeshiva in Kings County. Throughout his time in these schools, A.B. has received minimal instruction in English and math. He was provided minimal instruction in science last year for the first time, but this year is receiving no science instruction. He is now being given some school time on Jewish History, mostly focusing on medieval Europe, but has never received any instruction in American or world history or in civics. Although his report cards for the past few years from his Yeshiva indicated that he was at the top of his class in English and Math, testing by the DOE and by a private psychologist indicated that, despite having a high I.Q., A.B. was below average in vocabulary, reading comprehension, and other areas.

14. C.D., a minor represented by his parent, Jane Roe, is a 13-year-old boy who resides in Kings County, New York. C.D. currently is in the 8th grade at a secondary ultra-Orthodox Yeshiva in Kings County. In the past, he also attended an elementary ultra-Orthodox Yeshiva in Kings County. Throughout his time in these schools, C.D. has received minimal instruction in English and math and no instruction whatsoever in science, social studies, and civics. He finds no joy or stimulation in his school environment where instruction is provided through interminable lecturing and rote memorization, and he is performing below grade level in several subjects.

15. Although a psychiatrist their parents consulted about their educational difficulties recommended that the parents transfer both A.B. and C.D. to a Jewish religious school that provides a more stimulating, enriched curriculum, they were unable to enroll their sons in a modern orthodox Yeshiva that provides both a rigorous religious education and a substantially equivalent education because that school determined that their levels of academic functioning were too low.

16. Both A.B. and C.D. have had and continue to have behavioral difficulties that the teachers and other staff at their Yeshivas have been unable to address effectively, since their teachers and staff have no training in special education. The schools referred them for special education evaluation by the DOE. The DOE determined that both boys have emotional disabilities and recommended that they receive counseling and other related services. Although the DOE pays for therapies and other related services called for by the Individualized Education Programs (IEPs) it prepares for students attending nonpublic schools, it allows the ultra-Orthodox Yeshivas to select their own therapists. On information and belief, most ultra-Orthodox Yeshivas, including those attended by A.B. and C.D., select therapists who are

members of their own community or are individuals who are willing to accept the practices and procedures in effect at these schools, even if they are inconsistent with DOE policies and the IEPs prepared by the DOE. Because many of the teachers at the school lack college degrees and sufficient English language skills, therapists at A.B. and C.D.'s Yeshivas provide some minimal instruction in English language arts and math to them and to other students, even though their IEPs call only for counseling and other related services and the funding provided for these students by the DOE does not cover instruction in academic subjects. On information and belief, 80% of the students at the Yeshivas A.B. and C. D. attend have IEPs issued by the DOE.

17. E.F., a minor represented by his parent, John Doe, is an 8-year-old boy who resides in Kings County, New York. E.F. currently is in the 4th grade at an ultra-Orthodox Yeshiva in Kings County. E.F. has received minimal instruction in English and Math and no instruction whatsoever in science, social studies, or civics. Although his English and math instruction is scheduled for 90 minutes, four days a week, in fact, this instruction generally commences about 20 minutes late each day. The teacher who purports to teach English is a Yiddish language speaker who has trouble pronouncing many English words. Some of E.F.'s teachers discipline students in the classroom by using physical punishment.

18. Plaintiff I.J. is a 24-year-old male who attended ultra-Orthodox Yeshivas in the East Ramapo school district in Rockland County and in Brooklyn, New York. During the 16 years that he attended these schools, I.J. received no instruction in science, social studies, or civics. He received instruction in English and math for only about 90 minutes a day during his 5th, 6th, and 7th grade years and no secular studies during his high school years. I.J. taught himself English, as his teachers did not provide instruction in proper English.

19. I.J.'s Yeshiva did not provide a high school diploma, and despite attending a Yeshiva through age 20, he never obtained one. I.J. did not receive an education that would prepare him to function productively in the competitive job market. He has been attempting to obtain competitive employment for the past few years but does not know how to properly apply for and secure the kind of high-paying jobs with career prospects that he seeks. He currently works as a care provider for people with autism.

20. Defendant Kathy Hochul is the Governor of the State of New York and is sued in her official capacity. The Governor has the power and duty under the NY Constitution, article IV, §3 to ensure that the laws are faithfully executed.

21. Defendants Carl Heastie and Andrea Stewart-Cousins are sued in their official capacities as Speaker of the New York State Assembly and Majority Leader of the New York State Senate, respectively. The state legislature has primary responsibility under NY Constitution, article XI, §1 to ensure that all students in the state are provided the opportunity for a sound basic education.

22. Defendant State of New York is responsible for making and enforcing laws, overseeing public education, and, among other things, ensuring public safety and justice and providing for the general welfare.

JURISDICTION AND VENUE

23. Since most of the individual plaintiffs reside in Kings County, and the defendants exercise their responsibilities throughout the State of New York, this court has jurisdiction over the subject matter herein pursuant to CPLR art 5.

24. The court has jurisdiction to grant a declaratory judgment and appropriate injunctive relief pursuant to CPLR 3001 and 3017 (b).

CONTEXTUAL LAW AND FACTS

Constitutional and Statutory History

25. The New York Constitution of 1894, art IX, § 1, established a statewide education system “of free common schools in which all the children of the state may be educated.” Article XI § 2 of that constitution empowered the Regents of the University of the State of New York to oversee all of the local town schools and private academies that comprised that system. Those provisions of the 1894 Constitution are continued today as NY Constitution, article XI, §§ 1 and 2.

26. The Court of Appeals has interpreted NY Constitution, article XI, to “impose[] a duty on the Legislature to ensure the availability of a sound basic education to *all* the children of the state” (emphasis added) (*Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 315 [1995][hereinafter *CFE I*]; *see also*, *Campaign for Fiscal Equity v State of New York*, 100 NY2d 893, 902 [2003] [hereinafter *CFE II*]; *Campaign for Fiscal Equity v State of New York*, 8 NY3d 14, 20 [2006] [hereinafter *CFE III*]).

27. In 1894, the same year in which the state constitution was amended to require the establishment and maintenance of the statewide education system, the legislature adopted a compulsory education statute to ensure that “all the children” of the state, including students who attended private academies and educational facilities other than the local district schools, would receive a sound basic education comparable to that being provided to students in the public schools. Thus, chapter 671 of the New York Education Law enacted in 1894, provided that:

“If any such child shall so attend upon instruction elsewhere than at a public school, *such instruction shall be at least substantially equivalent to the instruction given to the children of like age at the public school of the city or district in which such child resides*; and such attendance shall be for at least as many hours of each day thereof, as are required of children of like age at public schools...” (emphasis added) (Thomas E.

Finegan. A Textbook on New York School Law, Including the Revised Education Law 184 [13th ed 1919]).

28. Similar substantial equivalence requirements have continued to be codified in New York State's statutes since 1894 and currently are set forth in Education Law art 65.

29. Since at least 1995, schools subject to the "substantially equivalent education" requirements under Education Law art 65 must provide, at minimum, a "sound basic education" as articulated by the Court of Appeals in *CFE I, II, and III*.

30. The constitutional authority of New York and the other states to regulate all nonpublic schools, including religious schools, was validated by the U.S. Supreme Court a century ago when it held that although parents have a liberty interest in sending their children to a nonpublic school that adheres to their religious or other values, the state also has the power and authority reasonably to regulate those schools:

"No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare" (*Pierce*, 268 US at 534).

31. For most of the years since 1894, the defendants have delegated to local school superintendents and local school districts (local school authorities or LSAs) enforcement of the requirement that education provided by all nonpublic schools be "substantially equivalent" to that provided by local public schools. For all this time, LSAs have had responsibility for inspecting the competence of teachers and the suitability of the curricula and instruction provided at nonpublic schools within the geographic area encompassed by the school district in order to ensure that all of these nonpublic schools were complying with the compulsory education and substantial equivalence laws.

32. On information and belief, over most of the past 131 years, most nonpublic schools, with the exception of many ultra-Orthodox Yeshivas, have voluntarily complied with these laws, and school districts have enforced the laws only on a sporadic basis, actually inspecting particular nonpublic schools only when alleged violations were brought to their attention.

33. The SED began to express greater concern and focused some attention on compliance with New York State's substantial equivalence laws beginning in the 1980s, a time when there was a dramatic growth in the ultra-Orthodox population and in the number of ultra-Orthodox Yeshivas, especially in New York City and in Rockland County. Many of these schools concentrated on instruction in religious subjects and provided little or no instruction in core secular subjects like English, mathematics, science, social studies, and civics.

The Hasidic Community and the ultra-Orthodox Yeshivas

34. There are 544 Jewish nonpublic schools in New York State, serving over 180,000 children, of which 414 or 75% are ultra-Orthodox and serve over 100,000 students or approximately 60% of all students in Jewish schools. On information and belief, more than 50% of all ultra-Orthodox schools in New York State are located in Kings County and about 20% are located in Rockland County.

35. There are about 200,000 ultra-Orthodox Jews in New York State, constituting approximately 10% of the state's Jewish population. The ultra-Orthodox are distinct from modern Orthodox Jews, who strictly follow religious law but also integrate their lives with contemporary society.

36. The majority of ultra-Orthodox Jews are members of about a dozen distinct Hasidic communities that are largely defined by allegiance to particular leaders, known as the

grand rebbes. They are vigorously religious people who make few concessions to the modern world and go to great lengths to avoid assimilation into it. They interpret the Bible and other religious texts strictly; segregate the sexes outside the home; speak Yiddish as their primary language; eschew television, radio, and English-language publications; and dress in distinctive ways that include head coverings and special garments for boys and modest dresses for girls. Children are educated in private religious schools, where most boys receive a thorough grounding in the Jewish texts and have limited exposure to secular subjects, and most girls receive a curriculum designed to prepare them for their roles as wives and mothers. The parents are expected to send their children to the local yeshivas rather than public schools or other nonpublic schools in order to remain in good standing in the community.

37. The grand rebbes wield significant power, and breaking the rules they set can carry serious consequences. Community members who break the rules may be exiled from the community and barred from seeing family and friends.

38. On information and belief, most members of the Hasidic communities vote in local, statewide, and national elections based on the grand rebbes' recommendations, following communal guidance disseminated by Yiddish-language newspapers, synagogue announcements, and printed palm cards listing approved candidates. The process by which a grand rebbe decides whom to endorse is typically pragmatic rather than ideological, rooted in careful assessments of which candidate will best serve the community interest as they define it. Accordingly, political candidates in New York have a long history of courting the Hasidic vote.

39. Since arriving in New York in the 1940s, Hasidic grand rebbes have relied on religious schools to propel the community's growth and maintain its continuity. There is no unified Hasidic school system. More than a dozen Hasidic groups each run their own schools.

Just one, the Lubavitch movement, encourages followers to speak English. In most of the other schools, classes are taught in Yiddish.

40. Hasidic schools are typically gender segregated, with different buildings, teaching staff, and curricula for boys and girls. Hasidic boys in New York tend to receive a very limited secular education and spend most of the school day studying religious texts like the Talmud.

41. A typical day in a boys' school for grades 4-8¹, which is in session six days per week, Sunday through Friday, except during the Jewish holidays and for about 6-7 weeks in the summer, is as follows:

7:45 am - 9:00 am: Morning prayer and breakfast.

9:00 am - 3:30 pm: Religious studies. Talmud and Torah taught solely in Yiddish and afternoon prayers, with a 15-minute recess break and a one-hour lunch break.

3:30 pm - 5:00 pm: Religious studies. Continued religious learning.

5:00 pm - 6:30 pm (Monday - Thursday): Secular studies of basic math and English.

42. The secular studies are extremely limited and are generally taught by teachers who are not certified, have no training in these subjects, and do not use any textbook or follow a curriculum. The ultra-Orthodox Yeshivas provide little if any instruction in science, secular history, or the arts. Moreover, since the secular studies class takes place at the end of a long day of religious study and ritual, along with the evident low priority placed on secular subjects, students are tired and uninterested in the secular studies class. They act out, and the teachers are unable to maintain the students' focus, resulting in only a minimal amount of learning taking place.

¹ Grades K-3 have a similar schedule but generally end their day at or about 4 pm and have more limited or no secular studies.

43. Upon graduation from eighth grade, most boys enter a Yeshiva high school that provides no secular studies whatsoever.

44. Hasidic girls are not expected to study religious texts deeply, so typically they receive a somewhat better secular education than their male counterparts because they spend less time studying religious texts. Most New York Hasidic girls' schools do not offer their students a Regents curriculum, but they do provide instruction in subjects such as English, math, and a religiously-oriented science and history curriculum. Girls are thus more likely to be literate in the English language as well as to speak the English language amongst themselves, while many male family members are not able to communicate functionally in the English language.

45. Perhaps ironically, many Hasidic boys can engage with texts in multiple languages (ancient Hebrew, Yiddish, and Aramaic) despite being functionally illiterate in the English language. Hasidic girls, by contrast, are often bilingual in Yiddish and English. The language deficiency suffered by the boys often leads to difficulty entering the job market.

46. The median income of Hasidic males is 30% lower than that of other males in New York State. Specifically, according to the American Community Survey for New York State undertaken by the US Census Bureau for the years 2018-2022 (ACS), the average income of all employed Hasidic males over age 20 in 2022 dollars was \$43,000, compared with \$61,000 for non-Hasidic males. As a result, approximately 60% of Hasidic households were poor or near poor, compared to under 30% of other households in New York.²

47. According to the ACS data, nearly 40% of Hasidic households received food stamps compared to 15% of households in the general state population. Nearly 70% of Hasidic households qualified for Medicaid, compared to just under 25% of other New York households.

² The percentages for "Hasidic households" in these statistics are based on ACS data on individuals in New York State whose first language is Yiddish.

48. Hasidic Yeshivas also receive substantial amounts of public funds for such educational expenditures as transportation, textbooks, software, testing materials, and special education services, as well as support for related anti-poverty programs such as after-school childcare.

49. On information and belief, such funding to Yeshivas in New York City alone amounts to approximately \$1 billion per year.

Yeshivas' Non-Compliance with the Substantial Equivalence Laws

50. Despite the fact that their Yeshivas receive substantial public funding and that New York State law requires these schools to comply with substantial equivalence requirements, several Hasidic grand rebbes have specifically declared they are opposed to allowing the schools under their jurisdiction to comply. For example, the Satmar grand rebbe Aaron Teitelbaum told his followers (in Yiddish) in 2018:

“The truth is, we either had very little secular studies or none at all . . . We will not comply, and we will not follow the state education commissioner under any circumstances” (Eliza Shapiro and Brian M. Rosenthal, *In Hasidic Enclaves, Failing Private Schools Flush With Public Money*, NEW YORK TIMES [Sept. 11, 2022]).

51. Such noncompliance has been largely overlooked until recently. As indicated in ¶ 31 above, although Education Law § 3234 specifically requires the commissioner of education to supervise the enforcement of the compulsory education law, the state historically has left responsibility for monitoring compliance with the substantial equivalence laws to LSAs.

52. In or about 1980, because of growth in the number of nonpublic schools, and especially of ultra-Orthodox Yeshivas, SED began to issue some general guidance to LSAs emphasizing their responsibility to undertake formal reviews, including site visits and analysis of curriculum materials, but only if a question about substantial equivalence should arise at a particular nonpublic school.

53. For example, a letter sent to local school superintendents by the Deputy

Commissioner of Education in 1980 stated:

“Local school officials are usually familiar with established nonpublic schools in their districts; they are aware of the general character of the schools, their instructional programs, and the achievements of their pupils through test results. Such information should satisfy local school officials that these established schools offer equivalent programs of instruction and, therefore, *it is not necessary for them to make formal visits to these nonpublic schools*. However, *if a question about such a school does arise*, the following procedure should be followed....” (emphasis added) (Letter from Robert Spillane, Deputy Commissioner, to School Board Presidents, District Superintendents, Superintendents of Public and Nonpublic Schools, Principals of Nonpublic Schools [Apr. 1980]).

The 2015 Non-Compliance Letter and SED’s Response

54. In July 2015, 52 former students, former teachers, and parents of current students at ultra-Orthodox Yeshivas sent a letter to superintendents of seven community school districts within the New York City School District (the 2015 Non-Compliance Letter), with a copy to the Chancellor of the New York City Public Schools, that stated, among others:

“We have been informed that New York law requires all nonpublic schools to provide an education that is “substantially equivalent” to that available in public schools. We have also been informed that under this requirement certain subjects, including English and mathematics or arithmetic, must be taught and that these required subjects must be taught in English from English language textbooks.

“Based on our experience as parents, students and teachers at the listed Yeshivas, we are seriously concerned that these Yeshivas are not providing an education that meets the requirement of substantial equivalence. Generally speaking, at the listed Yeshivas, English and mathematics are taught from around age 7 to age 13 for an average combined time of only 90 minutes and on only four days a week. Other secular subjects are not taught at all, let alone taught in English. At these Yeshivas, English instruction for boys stops at age 13. Girls generally receive a better secular education than do boys but we are still concerned that it is not sufficient to prepare them for their futures.”

Included in this letter was a list of 39 Yeshivas located in Brooklyn and Queens.

55. The former commissioner of education acknowledged that prior to 2015, “Materials already on file with the Department also confirmed that both LSAs and nonpublic

schools alike did not fully understand their obligations with respect to substantial equivalency determinations.” *New York State Council of Catholic School Superintendents v. Elia*, Index, No. 01574-19 (S.C. Alb. Co.), affidavit of Mary Ellen Elia, Commissioner of Education, ¶ 48 [Mar. 27, 2019]]. “Overall, it became apparent that both local school districts and nonpublic schools were not all aware of their responsibilities regarding substantial equivalency and that the regular and ongoing contact between public and nonpublic schools contemplated by the prior guidance was not occurring” (*id.* ¶ 52).

56. In response to the 2015 Non-Compliance Letter, in April 2016, SED created a new State Office of Religious and Independent Schools within the Department and initiated a process to develop guidance on specific procedures LSAs should use to monitor compliance with the substantial equivalence laws by nonpublic schools in the geographic areas encompassed by their school districts.

57. Subsequently, in or about November 2018, SED promulgated and disseminated through its website and other means a detailed set of guidelines together with four “toolkits” to assist LSAs in the monitoring process. These guidelines called for district superintendents, *inter alia*, to conduct substantial equivalence reviews of all nonpublic schools in their districts in accordance with specified statewide procedures over the next two to three years, with regular reviews conducted thereafter on a five-year cycle.

58. Parents for Educational and Religious Liberty in Schools (PERLS), an organization comprising a number of ultra-Orthodox Yeshivas and parents of certain students attending those Yeshivas, challenged the new guidelines in the New York State Supreme Court, Albany County. In a decision issued on April 17, 2019, Hon. Christina Ryba invalidated SED’s substantial equivalence guidelines because they were implemented without following proper

procedures as required by the State Administrative Procedure Act (APA) (*Parents for Educational and Religious Liberty in Schools v Rosa*, [S. Ct, Albany Co. Index No. 901354-19]).

59. In response to the court's decision, SED undertook an extensive notice and comment process and other procedures required by the APA. On Sept. 18, 2022, SED issued a new set of regulations regarding substantial equivalence requirements that are now codified as 8 NYCRR Part 130 (the 2022 Regulations).

60. The 2022 Regulations specified the procedures that local school authorities must use to determine whether nonpublic schools, including religious nonpublic schools, are providing their students a substantially equivalent education as required by Education Law § 3204 and other substantial equivalence statutes, as well as the procedures nonpublic schools may use to contest any negative determinations.

61. The regulations specified seven "pathways" that LSAs could use to determine whether a school was meeting applicable requirements. These pathways provide that nonpublic schools could be deemed in compliance if they (1) are registered with the SED; (2) are state-operated, state approved or State-supported schools; (3) meet requirements of approved accreditation agencies; (4) participate in the International Baccalaureate program; (5) are approved by the United States government for instruction on a military base or service academy; (6) assess their students with state-approved tests and track their educational progress; or (7) are found by the LSA to be substantially compliant based on the LSA's on-site inspection and evaluation of whether their teachers are competent and whether the instructional program as a whole incorporates instruction in English language arts, mathematics, science, social studies, and civics that is substantially equivalent to such instruction required to be provided in public

schools. LSAs utilizing Pathway 7 were required to inspect all nonpublic schools in their geographic area by the end of the 2024-2025 school year and every seven years thereafter.

62. PERLS and others then commenced a second proceeding in Albany County Supreme Court challenging the procedures SED utilized in adopting the 2022 Regulations, as well as certain aspects of the 2022 Regulations that they claimed were not authorized by the underlying statutes and interfered with their constitutional religious liberty rights. Judge Ryba dismissed their procedural and constitutional claims, holding that the new regulations were adopted in accordance with applicable APA procedures and that, except for two specific provisions, these regulations were implementing the statutory substantial equivalence provisions. She noted that the petitioners had not challenged the constitutionality of the underlying legislative mandates (*Parents for Educational and Religious Liberty in Schools v Young*, 79 Misc 3d 454, 466 [Albany County 2023]).

63. Judge Ryba did, however, hold that two specific “penalty” provisions in the 2022 Regulations were inconsistent with the applicable statutory scheme and, therefore, were arbitrary, irrational, and invalid (*id* at 469). These provisions provided that such schools “shall no longer be deemed a school which provides compulsory education fulfilling the requirements of Article 65 of the Education Law” and that parents are then required “to enroll their children in a different appropriate educational setting, consistent with Education Law § 3204” (8 NYCRR 130.6).

64. Judge Ryba’s decision regarding the enforcement provisions was reversed by the Appellate Division, Third Department in *Parents for Educational and Religious Liberty v Young*, 230 AD3d 83 (3d Dept 2024). The Appellate Division held that “By definition, a nonpublic school that fails to demonstrate substantial equivalency necessarily fails to fulfill the requirements of the compulsory education mandate . . . [and that] [p]arents are obligated to

comply with this mandate” This ruling was affirmed unanimously by the Court of Appeals (*Parents for Educational and Religious Liberty in Schools v Young*, ____ NY ____, 2025 WL 1697944 [June 18, 2025]). The Court of Appeals ruled solely on the validity of the two enforcement provisions, noting: “Our analysis of the regulations is necessarily cabined because we are not presented on this appeal with the legality of Part 130 in its entirety” (*id.* at 7).

New York City’s Substantial Compliance Reviews

65. While SED was engaging in this regulatory revision process, the DOE substantially delayed its response to the 2015 Non-Compliance Letter described in ¶ 54 above and did not undertake any site visits to the identified ultra-Orthodox Yeshivas for two years.

66. For the first two years after the 2015 Non-Compliance Letter was submitted, the DOE requested relevant curricular materials from all of the 39 identified Yeshivas and met with representatives of a number of these Yeshivas. On information and belief, most of the Yeshivas did not submit the requested curricular materials; instead, various Yeshiva and PERLS representatives, apparently acknowledging shortcomings in their existing curricula, stated that they were creating new English Language Arts (ELA) curricula for grades 4-6 and new math curricula for grades 1-3 (Letter from Richard A. Carranza, Chancellor, to Mary Ellen Ellia, Commissioner, at 3, 5-8 [Aug. 18, 2018]).

67. The Yeshiva representatives also claimed that some math, science, and social studies themes were incorporated in the existing Jewish Studies curricula. These groups provided the DOE with an outline of these curricular materials and some sample items, but they did not give DOE a full set of the materials. The DOE, therefore, concluded that it “cannot currently assess the quality of the curricula” (*id.* at 7).

68. Throughout this initial two-year period, complainants who had signed the 2015 Non-Compliance Letter, an organization called the Young Advocates for Fair Education (YAFFED) that represented them, and various public officials implored the DOE to send experienced teachers and curriculum specialists to each of the identified Yeshivas in order to examine directly the extent to which the requisite core secular subjects were actually being taught at these schools and whether they were providing their students a substantially equivalent education. The DOE repeatedly rejected or deferred these requests.

69. The dilatory response of the DOE to the 2015 Non-Compliance Letter eventually led to a joint investigation by the New York City Department of Investigation and the Special Commissioner for Investigation of the New York City Department of Education. That investigation determined that there was “political horse-trading in which representatives of the mayor agreed with representatives of State legislators to delay any interim report in connection with securing the overarching goal of extending mayoral control of the City’s schools” (Findings of a Joint Investigation by the New York City Department of Investigation and the Special Commissioner of Investigation for the New York City School District on the City Department of Education’s Inquiry into Education Provided at Hasidic Yeshivas [Dec. 2019]).

70. In March 2017, a full two years after the 2015 Non-Compliance Letter had been submitted, the DOE finally commenced a series of site visits to the Yeshivas on the complainants’ list (*id.* at 9). Fifteen of these schools refused to permit the DOE representatives to enter their buildings to observe classes, despite specific provisions of the SED guidelines in effect at the time that required them to do so. Fifteen other schools did permit the DOE to visit their classes, and the DOE representatives found that instruction was provided only in Yiddish, Hebrew or Aramaic in 37% of the observed classes, which consisted of 11 math classes, 13

English Language Arts classes, three science classes, and only two social studies classes (one of which was a history class focused solely on biblical history) (*id.* at 9-13).³

71. Following these visits, Chancellor Carranza stated that the DOE had observed merely some “examples of good practices” and that the DOE was prepared “to work with the schools it visited to build on these practices” (*id.* at 13).

72. On information and belief, the extensive lack of co-operation with DOE by most of the identified Yeshivas was consistent with the position of many of the Hasidic grand rabbes who, on information and belief, instructed these schools not to comply with the substantial equivalence laws and to delay or avoid investigations by any public officials who were attempting to enforce these laws. For example, grand rebbe Aaron Teitelbaum, who leads many Satmar Hasidic Yeshivas in Brooklyn and Rockland County, stated at the time these inspections were being undertaken:

“In the past, every child violated the law, and if it would have ended up in court there wouldn't have been an answer as to why the law wasn't adhered to . . . Eventually, the City sent out letters to 39 [schools] in New York City . . . What could they do? These letters meant investigations, and there's no way to lie or get around it either” (Rabbi Ytzchak Frankfurter, *Securing Jewish Education: A conversation with Satmar Rebbe Rav Aaron Teitelbaum, Shlita*, Ami Magazine, at 69–74 [Apr. 11, 2018]).

As discussed below, acting on these concerns, grand rebbe Teitelbaum then took political actions that led the governor and the legislature to revise the substantial equivalence statutes to substantially weaken the statutory and regulatory requirements as they pertained to the Hasidic Yeshivas.

73. Given the extensive resistance to the DOE's investigations, Chancellor Carranza sought SED's guidance on how to proceed with the 15 schools that refused to allow the DOE to

³ The remaining 9 schools on the list turned out not to be in existence any longer or were post-secondary or other institutions that were not subject to the substantial equivalence laws for various reasons.

enter their buildings, and how the legislative revisions obtained by grand rebbe Teitelbaum and his colleagues to the substantial equivalence laws, known as the “Felder Amendment,” would impact the review process. (Letter from Richard A. Carranza, Chancellor, to Mary Ellen Ellia, Commissioner, at 13-14 (Aug. 18, 2018).

74. Between 2019 and 2022, SED provided informal and formal technical assistance to the DOE in regard to completing its investigations of the Yeshivas identified in the 2015 Non-Compliance Letter. Finally, on January 23, 2023, Education Commissioner Betty Rosa formally ordered the DOE to complete all of these investigations and report to her by June 30, 2023. The DOE’s report is described in detail in ¶¶ 93-94, *infra*.

The Felder Amendment

75. In reaction to the initiation of investigations prompted by the 2015 Non-Compliance Letter, and, as directed by grand rebbe Teitelbaum, Simcha Felder, a state senator from a largely ultra-Orthodox neighborhood in Brooklyn, proposed a bill during the 2018 legislative session to amend Education Law § 3204, the main substantial equivalence statute. Sen. Felder had unique leverage in the closely divided state legislature at the time, since he was a Democrat who caucused with the Republicans, giving the Republicans a slim 1-vote majority, and neither party was inclined to alienate him. Sen. Felder used his position as a crucial swing vote to pressure the legislature into including his amendment in the \$168 billion budget bill at the last minute, without any public hearings, committee review, or public debate, in order to avoid non-compliance with the statutory April 1 budget deadline that also coincided with the Easter-Passover holiday weekend that year.

76. Rabbi Teitelbaum candidly acknowledged the pressure tactic that he and Sen. Felder used to get this amendment enacted as a last-minute amendment to the budget bill without any real legislative deliberation or consideration:

“Then the idea came up to tie into the budget. This was something that came up months ago.... The plan was to use the political situation for our benefit. Reb Yaakov made a [calculation] that the budget has to be passed by April 1, and it’s of paramount importance to the governor to have it passed, because his prestige is at stake if it isn’t passed on time. Therefore, he told Simcha Felder that if he would block the budget, the governor would have to get involved, and then it would be possible to have the law changed for our benefit.

“I spoke to Simcha Felder then and I told him to keep it secret and wait until the last minute, because otherwise it would have to go through the Assembly and it wouldn’t even make it past the committee stage” (Rabbi Ytzchak Frankfurter, *Securing Jewish Education*, *supra* at 74-75).

79. This bill, which has since come to be known as the “Felder Amendment,” was adopted by the legislature and signed by the governor, effective April 12, 2018. It established special procedures that would apply exclusively to:

“[N]onpublic elementary and middle schools that are: (1) non-profit corporations, (2) have a bi-lingual program, and (3) have an educational program that extends from no later than nine a.m. until no earlier than four p.m. for grades one through three, and no earlier than five thirty p.m. for grades four through eight, on the majority of weekdays” (Educ Law § 3204 [2] [ii], as amended by L 2018, ch 59, pt SSS, § 1).

This definition of nonpublic schools eligible for the special procedures set forth in the Felder Amendment describes extended school opening and closing times, and other specific details that together apply only to ultra-Orthodox Yeshivas. In other words, these legislative revisions were specifically crafted to benefit only the ultra-Orthodox Yeshivas.

80. The Felder Amendment’s special procedures authorize LSAs and the Commissioner of Education to set aside the statutory and regulatory substantial equivalence provisions that apply to all other nonpublic schools in the state. Instead, the revisions contained in the Felder Amendment deem an ultra-Orthodox elementary or middle school substantially

equivalent if it provides academically rigorous instruction that “develops critical thinking skills in the school’s students, taking into account the entirety of the curriculum” (*id.*). The amendment then describes and authorizes the schools to utilize certain particular aspects of instruction in English, math, science, and history that differ from, and are more lenient than, the Regents’ curriculum requirements in these subjects that are applicable to the public schools and other nonpublic schools.

81. In other words, the Felder Amendment allows the ultra-Orthodox Yeshivas to be deemed substantially equivalent if their students master a limited amount of knowledge and skills in each subject area that purportedly develop “critical thinking skills,” but exempts them from the full range of knowledge and skills in core academic subject areas required of all other public and nonpublic schools.

82. In regard to high school students, the Felder Amendment also defines eligibility for special procedures in a manner that applies only to ultra-Orthodox Yeshivas, *i.e.*,

“[N]onpublic high schools that: (1) are established for pupils in high school who have graduated from an elementary school that provides instruction as described in this section, (2) are a non-profit corporation, (3) have a bi-lingual program, and (4) have an educational program that extends from no later than nine a.m. until no earlier than six p.m. on the majority of weekdays” (Educ Law § 3204 [2] [iii], as amended L 2022, ch 56, pt A, § 7).

83. The exemptions for high school students are even more sweeping than those for elementary and middle school students. These students do not need to study any English, mathematics, science, history, or civics whatsoever, so long as “the curriculum provides academically rigorous instruction that develops critical thinking skills in the school’s students, the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education” (*id.*).

84. The Felder Amendment also exempts students at ultra-Orthodox Yeshivas from the specific statutory provisions that require all other nonpublic schools to provide instruction in “United States history, civics, hygiene, physical training, [and] the history of New York state” (Educ Law § 3204 [3]), and instruction in “civility, citizenship and character education” (Educ Law § 801).

85. The final major change wrought by the Felder Amendment was to require that the commissioner of education render the final determination regarding ultra-Orthodox Yeshivas’ compliance with the substantial equivalence statutes, instead of final determinations being made by the DOE and other LSAs, as is the case with all other nonpublic schools (Educ Law § 3204 [2] [v], as amended by L 2022, ch 56, pt A, § 7).

86. On information and belief, grand rebbe Teitelbaum and other Hasidic leaders sought to lodge the responsibility for making final substantial equivalence determinations with the state commissioner rather than LSAs because they thought they would be able to wield more political influence to impede effective enforcement with the state authorities in Albany than with numerous local authorities throughout the state.

87. At the same time that the Felder Amendment was being adopted by the legislature, the SED was completing its development of a set of substantial equivalence regulations in accordance with applicable APA procedures, as required by the Albany County Supreme Court decision discussed above in ¶ 58. The final version of the 2022 Regulations, therefore, incorporated the special procedures for ultra-Orthodox Yeshivas established by the Felder Amendment.

88. Accordingly, in regard to ultra-Orthodox Yeshivas, the 2022 Regulations require LSAs to undertake an initial substantial equivalence review in accordance with the special

procedures allowed for these schools and then forward a recommendation and supporting documentation to the commissioner for her final determination of their substantial equivalence status (8 NYCRR 130.2).

Recent SED and DOE Compliance Activities

89. SED required all school districts in the state to report on their substantial equivalence determinations regarding all nonpublic schools in their geographic areas, as of December 1, 2024.

90. As of December 1, 2024, most school districts throughout the state reported that they had determined that most of the nonpublic schools within their geographic areas were in compliance with the substantial equivalence requirements, that most of these schools qualified under Pathways 1-6 of the regulations and, therefore, that the on-site inspection and evaluation of their programs required under Pathway 7 were required only for a minority of the schools.

91. The reports of school districts containing ultra-Orthodox Yeshivas that were subject to the Felder Amendment were, however, notably different. The DOE and virtually all of the other school districts in the state with ultra-Orthodox Yeshivas reported that only a small proportion of the Yeshivas in their areas had qualified as being substantially equivalent under Pathways 1-6 and that the vast majority of these Yeshivas required on-site inspections and evaluations under Pathway 7, but that these inspections were not yet completed and were still “under review.”

92. Following issuance of the commissioner’s 2023 Order that the DOE complete all of its Felder Amendment reviews by June 30, 2023, as discussed above in ¶ 74, the DOE accelerated its monitoring of the schools listed in the 2015 Non-Compliance Letter in accordance with the new Felder Amendment procedures.

93. On the day of the deadline, June 30, 2023, more than eight years from the submission of the 2015 Non-Compliance Letter, the DOE released a report of its findings regarding the 28 schools⁴ identified in the letter.

94. That report did not provide any information regarding monitoring of any of the hundreds of other ultra-Orthodox Yeshivas in New York City. (As indicated above in ¶ 91, the vast majority of the other ultra-Orthodox Yeshivas in New York City were still “under review” as of December 1, 2024.)

95. As of June 30, 2023, the status of the DOE reviews of the 28 identified ultra-Orthodox Yeshivas was as follows:

1. The DOE recommended that nine schools be deemed substantially equivalent, five on the basis of their status as schools affiliated with a registered high school (Pathway 1) and four as being compliant based on DOE site visits and reviews of curriculum materials (Pathway 7). The commissioner later reversed two of these Pathway 7 recommendations.
2. The DOE recommended that the remaining 19 schools be deemed not substantially equivalent. The commissioner agreed with these determinations and instructed the DOE and nonpublic schools involved to collaboratively develop, within 60 days, a timeline and plan pursuant to 8 NYCRR 130.8 (d) and otherwise follow Part 130.

96. Section 130.8 of the 2022 Regulations provides that the time for the development and implementation of such timelines and plans:

shall not exceed the end of the next academic year following the year in which the preliminary determination is made provided, however, that the Commissioner may, in his or her discretion and upon written request from the LSA and nonpublic school jointly or from the nonpublic school on notice to the LSA, extend the sixty-day deadline and/or timeline collaboratively developed by the LSA and nonpublic school upon a showing of good faith progress toward development of a timeline and/or implementation of the plan, as applicable.

⁴ While the 2015 Non-Compliance Letter listed 39 schools, it included two addresses related to one of the schools. Consequently, the DOE included both sites of the school in its inquiry, for a total of 40 sites. Out of these 40 sites, 12 were ultimately deemed to be closed, not schools for compulsory education-aged students, or outside the scope of inquiry for other reasons, leaving 28 for substantial equivalence consideration.

97. As of March 2025, almost a full ten years after the 2015 Non-Compliance Letter had been submitted and more than ten months past the “the end of the next academic year following the year in which the preliminary determination [had been] made,” the status of the 21 non-compliant New York City ultra-Orthodox Yeshivas was as follows:

- a. The commissioner made a final determination that six schools were not substantially equivalent and that parents could no longer meet their compulsory attendance requirements by enrolling their children in those schools.
- b. 12 schools were scheduled to have additional DOE follow-up reviews by June 2025.
- c. Two schools were scheduled to have DOE reviews in 2026.
- d. The status of one school was unclear because the DOE had recommended that it was not providing substantially equivalent instruction, but the school claimed it had closed and had been replaced by another Yeshiva operating at the same location.

98. In short, a decade after the 2015 Non-Compliance Letter had alleged that at least 28 Hasidic Yeshivas in New York City were markedly out of compliance with the state’s substantial equivalence laws, only seven schools had officially been deemed substantially equivalent; only two of these had achieved this status on the basis of site visits and actual reviews of their curricula and teacher qualifications while five were deemed substantially equivalent based on questionable “alternative pathways” that did not require a detailed site visit or review pursuant to 8 NYCRR 130.3. The commissioner had ruled that parents could no longer enroll students in six schools and the remaining 15 schools, constituting a majority of the original 28 schools, had been permitted additional time for continuing negotiations and investigations regarding possible efforts to comply, before the commissioner issues a final determination concerning their continued eligibility for student enrollment.

99. The inadequacy of the secular education provided by many of the ultra-Orthodox Yeshivas is illustrated by the commissioner’s findings regarding the six schools which she had deemed ineligible to continue to enroll students after they had been given almost 10 years of

repeated opportunities to come into compliance. For example, the commissioner found, after the DOE's on-site inspections and evaluations of curriculum materials in both 2019 and 2023, that there was insufficient evidence of teacher competence in Yeshiva Mosdos Chasidei Square of Boro Park, as exemplified by the fact that a fifth-grade science teacher could not answer a student's inquiry about the temperature at which water freezes. There was also limited to no evidence of student work or assessments in English or math, little or no instruction being provided in history or science, and there was no evidence of a program designed to support English language acquisition for students with limited English proficiency.

100. Commissioner Rosa's negative final determination letter sent to this school on March 11, 2025, explained in detail the reasons for the non-compliance finding. The commissioner wrote, *inter alia*, that:

"On June 30, 2023, NYC DOE ... recommended that the Commissioner determine the nonpublic school does not provide substantially equivalent instruction as required by Education Law § 3204 and Commissioner's Regulations Part 130. NYC DOE determined, among other deficiencies, deficiencies in all four core subjects of English language arts, mathematics, science, and social studies. As for the additional criteria applicable to Felder Amendment schools, NYC DOE noted that the nonpublic school satisfied the first skill-based factor set forth in Education Law § 3204 (2) (ii) but did not find sufficient evidence of the second, third, fourth, and fifth factors (English language arts, math, history, and science).

"The June 30 recommendation was provided to the nonpublic school, which was afforded an opportunity to present additional relevant materials ... The nonpublic school submitted additional materials on or about August 7, 2023, that, in large part, appeared to duplicate materials submitted to NYC DOE during the inquiry ...

"By decision dated November 20, 2023, I adopted the findings of NYC DOE and its recommendations ... I ordered the nonpublic school and NYC DOE to collaboratively develop, within 60 days, a timeline and plan pursuant to 8 NYCRR 130.8 (d) and otherwise follow Part 130.

"The nonpublic school initially met with NYC DOE to discuss creating a timeline and plan, however, it then refused to engage with NYC DOE in developing such a plan despite State Education Department ... staff granting multiple extensions of time to do so and warning the parties of the potential consequences of failing to cooperate ...

“Given the paucity of proof that required instruction is delivered to students and the nonpublic school's failure to cooperate in developing a timeline and plan or submit any further evidence demonstrating substantial equivalency of instruction, I have no option but to find that the nonpublic school has not sufficiently demonstrated compliance with Part 130 or the Education Law. ...”

101. This Yeshiva, like many of the other ultra-Orthodox Yeshivas, took advantage of the extensive opportunities for collaboration and mediation with both the DOE and SED provided by the 2022 Regulations not to develop an acceptable substantially equivalent education program, but rather to further delay a final determination regarding their non-compliance. On information and belief, this Yeshiva, like many other ultra-Orthodox Yeshivas, had no intention of actually complying with the law.

102. The DOE site visit reports from the other New York City Yeshivas that were still “under review” similarly demonstrated little evidence of teacher competence, limited curriculum in the core subject areas, no evidence of grade progression, and limited instruction in English.

The May 2025 Amendment

103. On May 9, 2025, the legislature included in its voluminous state budget bill a short section that substantially revised Education Law § 3204. Repeating the tactic used before with the Felder Amendment, this amendment (“the May 2025 Amendment”) had been inserted into the final draft of the budget bill by defendant Governor, defendant Majority Leader of the Senate and defendant Speaker of the Assembly during their confidential budget negotiations, without holding any public hearings, public debates or formal discussions regarding this item on the floor of the Senate or the Assembly.

104. On information and belief, the May 2025 Amendment was added to the budget bill by the governor and the legislative leaders at the behest of representatives of the ultra-Orthodox Yeshivas in response to the commissioner’s final determinations that six Yeshivas were

in violation of substantial equivalence requirements and that parents could no longer enroll their children in those schools to meet their obligations under the compulsory education law.

105. Learning that the governor and the legislative leaders were considering adoption of this amendment, SED issued an official statement saying that:

“We are aware of reports that an agreement on Substantial Equivalency may be included in the state budget negotiations ... [W]e remain deeply concerned that the fundamental right to a high-quality education for every child could be compromised as part of political bargaining. Given that implementing the Substantial Equivalency law carries no fiscal impact, it is troubling that such a critical issue might be decided through the budget process rather than through transparent, public debate. This is not policymaking. This is interference” (Kate Lisa, *'This is interference': state Education Department blasts budget deal on nonpublic school rules*, Spectrum News, May 5, 2025, available at <https://spectrumlocalnews.com/nys/central-ny/politics/2025/05/05/potential-budget-deal-reached-on-nonpublic-school-rules>).

106. Although many members of the legislature had substantial reservations about this amendment, they nevertheless felt compelled to vote for the budget bill package that included this item because at that point (a) the budget was overdue by 39 days from the statutory April 1 budget deadline; (b) pursuant to Legislative Law § 5, members of the legislature receive no salary during any time period that adoption of the annual budget is delayed; and c) constituents throughout the state were clamoring for the details of the \$254 billion state budget so they could begin to plan school, hospital and other critical governmental operations for the coming fiscal year.

107. The May 2025 Amendment added a new section 6 to Education Law § 3204 that was made retroactive to April 1, 2025, and provided, among others, that (a) it would supersede any law, rule, or regulation to the contrary; and (b) nonpublic schools that administer annual examinations to their students solely in English language arts, math, and science—*with no requirement that students be tested in social studies or civics*—will be deemed substantially equivalent if:

- i. their students have the same average three-year participation rate as the average three-year participation rate of students statewide (regardless of their actual scores on the examinations) (Educ Law § 3204 [6] [a] [vii]); *or*
- ii. their students receive the same average proficiency scores as students in the local geographic area or the average of students statewide as a whole (Educ Law § 3204 [6] [vi]); *or*
- iii. the examination administered by the school is a test used in a New York State testing program *or* is a nationally recognized, commercially published norm-referenced achievement test that is recognized and used in at least three other states, (Educ Law § 3204 [6] [vii] [b] [i] [1]).

It also provided that: (c) a “phase-in period” is granted to all nonpublic schools choosing to utilize one of the above-described examination pathways to substantial equivalence designation, beginning with examinations given to the second-grade class at the end of the 2026-2027 school year and proceeding on a class per year basis until the end of the 2032-2033 school year (Educ Law § 3204 [6] [vii] [b] [i] [1] [iii]); (d) the various alternative pathways to compliance that do not require actual on-site inspections and reviews of teacher competence, curricula, and instruction at nonpublic schools were now incorporated into the statute (Educ Law § 3204 [6] [a] [i]–[vi]); and (e) the accreditation pathway was expanded to allow “a nonpublic school [to be] awarded ‘provisional status’ by an accreditation body approved by the commissioner,” with no standards set forth for defining or guiding this “provisional” designation (Educ Law § 3204 [6] [a] [iii]).

108. In sum, the May 2025 Amendment effectively eviscerates the substance of the substantial equivalence law for ultra-Orthodox Yeshivas by a) putting the full implementation of the law on hold for the next eight years, b) elevating from regulation to statute the system of alternative pathways, some of which have dubious validity, and c) further providing that if and when the law is fully implemented after the 2032-2033 school year, a nonpublic school can

achieve a substantial equivalence designation by merely administering certain examinations annually to its students, regardless of the students' actual performance on the exams and without any requirement whatsoever that any of its students be tested in or otherwise demonstrate any knowledge or experience in the vital areas of history or civics.

109. State Senator Liz Krueger, the Chair of the Senate Finance Committee, formally introduced the budget bill on the floor of the Senate on May 8, 2025 with a statement expressing her strong objections to the inclusion of the May 2025 Amendment in the budget bill.⁵ She explained her strong opposition to these revisions to the substantial equivalence law, in a passionate 10-minute speech in which she that stated, *inter alia*, that:

“I must also clearly state my strong objection to the substantial equivalence changes ... I very much am hoping the courts challenge what we are doing today. . . The issue is not religious freedom. This issue is about a child's right to education. Beginning, end, period. People are free to practice their religion in New York State. They are not free to withhold an education from their children. That is called educational neglect, and it is unconstitutional in our state. ... This legislation trades away children's future for political expediency. ... [This] is a direct assault on the futures of tens of thousands of students ... It robs the Board of Regents and the State Education Department of their roles in enforcing the law. ... Society's interest in ensuring all students are prepared to function as members of civil society is at stake. ... We should not be doing this ...”

110. On July 15, 2025, three of the ultra-Orthodox Yeshivas that had been issued final determinations of non-compliance and denied the right to continue to enroll students, as described in ¶ 97 above, filed a combined Article 78 and Declaratory Judgment action against SED and Commissioner Rosa in Supreme Court, Albany County. They argued that their negative final determinations should be annulled and vacated because of the enactment of the May 2025 Amendment and that they should now be permitted to enroll students and to attempt to meet the

⁵ Sen. Krueger stated that she nevertheless felt compelled to vote for this budget bill that contained these revisions to the substantial equivalence laws because of the state's critical need to finally adopt a budget six weeks after the statutory due date.

new assessment pathway requirements during the 8-year phase-in period permitted by those revisions. On September 3, 2025, Hon. Richard J. McNally, Jr. granted their petition, holding that “upon electing to utilize the new assessment pathways ... the petitioner schools immediately satisfy the substantial equivalent criteria . . .” (*Yeshiva Mosdos Chasidei Square Boro Park v. New York State Education Department*, Index No. 906775-25 [S. Ct, Alb. Co. Sept. 3, 2025]).

111. SED had required all LSAs responsible for reviewing schools covered by the Felder Amendment to report on their substantial equivalency determinations for these schools by June 30, 2025. As of September 17, 2025, SED has released no information regarding the extent to which LSAs, in fact, had timely filed the required reports.

112. On information and belief, confusion concerning whether the May 2025 Amendment has relieved LSAs of all responsibilities regarding enforcement of the substantial equivalence laws, at least during the “phase-in period” permitted by that Amendment, has deterred the DOE and other LSAs from proceeding further with any pending inspections and from reporting the status of their substantial equivalence inspections and reviews by the June 30 filing date.

113. In any event, especially in light of Justice McNally’s decision in the *Yeshiva Mosdos Chasidei Square Boro Park* case, the DOE and other LSAs around the state are unlikely to continue to undertake on-site inspections and reviews of any ultra-Orthodox Yeshivas during the lengthy “phase-in” period permitted by the May 2025 Amendment.

114. Barring a further decision by this Court or another Court, the May 2025 Amendment has, in fact, halted effective enforcement of NY Constitution, article XI, §1 and of the state’s compulsory education laws and regulations for all ultra-Orthodox Yeshivas in the state, at least for the lengthy “phase-in period” permitted by those revisions.

SPECIFIC ALLEGATIONS

I. THE STATE’S FAILURE TO ENFORCE SUBSTANTIAL EQUIVALENCE REQUIREMENTS DENIES STUDENTS IN ULTRA-ORTHODOX YESHIVAS THEIR CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION

115. NY Constitution, article XI, § 1 provides that “The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”

116. The Court of Appeals has held that “by mandating a school system ‘wherein all the children of this state may be educated,’ the State has obligated itself constitutionally to ensure the availability of a ‘sound basic education’ to all its children” (*CFE v State of New York*, 100 NY2d 895, 902 [2003]).

117. The Court of Appeals has defined a “sound basic education” as “minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas,” that “provides schoolchildren the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants” (*id.* at 907-08). In addition, the Court of Appeals has specified that “voting and jury service ... are the civic responsibilities *par excellence*” (*id.* at 906-07).

118. “[T]he Education Article imposes a duty on the Legislature to ensure the availability of a sound basic education to *all* the children of the State” (emphasis added) (*CFE v State of New York*, 86 NY2d at 315; *see also CFE v State of New York* 100 NY2d at 902; *CFE v State of New York*, 8 NY3d at 20).

119. In its recent ruling on the “penalty clauses” of the 2022 Regulations discussed in ¶¶ 63-64 above,⁶ the Court of Appeals specifically held that NY Constitution, article XI, § 1, applies to students attending nonpublic schools, including ultra-Orthodox Yeshivas:

“The New York Constitution ‘requires the State to offer all children the opportunity for a sound basic education . . . to enable [them] to eventually function productively as civic participants capable of voting and serving on a jury’ *These constitutional mandates are codified in the Education Law, which provides that children from 6 to 16 years old in New York State are entitled to a free education ... Such instruction may be provided at ‘a public school or elsewhere.’ If a child receives instruction elsewhere, the instruction “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 resides.”* (emphasis added, citations omitted) (*Parents for Educational and Religious Liberty in Schools v Young*, __ NY ___, 2025 WL 1697944 [June 18, 2025] [quoting *CFE I*, 86 NY2d at 316; Educ Law § 3204]).

120. The defendants have denied and are currently denying the individual plaintiffs and the members of the plaintiff class their constitutional right to the opportunity for a sound basic education.

121. The Legislature has specifically recognized in the Felder Amendment that all students at nonpublic schools, including students at ultra-Orthodox Yeshivas, must be provided a “sound basic education,” (Educ Law § 3204 [2] [iii]). Nevertheless, this same statute includes vague, ambiguous language designed to absolve ultra-Orthodox Yeshivas from providing minimally adequate instruction in English, mathematics, science, social studies and civics that are mandated components of a sound basic education.

⁶ Although this decision was issued shortly after the enactment of the May 2025 Amendment, the Court of Appeals explicitly stated that this case concerned only the two penalty provisions considered by the lower courts and that “Our analysis of the regulations is necessarily cabined because we are not presented on this appeal with the legality of Part 130 in its entirety.... Therefore, our scope of review is limited to petitioners’ facial challenge to the Commissioner’s authority to promulgate these specific provisions” (*id* at ___). The Court upheld the validity of the penalty provisions, and specifically stated that the question of the effect of these provisions on the nonpublic schools that received negative determinations before the effective date of the May 2025 Amendment (as raised in the *Mosdos Chasidei Square, Boro Park* case discussed above in ¶ 110,) “are not properly before us on this appeal.” *Young* at n. 5.

122. The May 2025 Amendment denies the individual plaintiffs and members of the plaintiff class their constitutional right to the opportunity for a sound basic education by allowing nonpublic schools to be deemed in compliance with substantial equivalence requirements if their students merely participate in taking (without necessarily achieving proficient scores on) certain annual examinations that do not assess students' actual knowledge of social studies, American history, or whether they are prepared to function productively as civic participants capable of voting and serving on a jury.

123. The May 2025 Amendment denies the individual plaintiffs and members of the plaintiff class their constitutional right to the opportunity for a sound basic education by arbitrarily and unreasonably allowing nonpublic schools to be deemed in compliance with substantial equivalence requirements if their students take certain commercially published examinations used in at least three other states, even though substantial equivalence requirements (if any) in these states are not aligned with New York requirements and these nationally-recognized achievement tests do not adequately assess the knowledge, skills and abilities identified by the State of New York as being important for all of its students.

124. The May 2025 Amendment denies the individual plaintiffs and members of the plaintiff class their constitutional right to the opportunity for a sound basic education by arbitrarily and unreasonably staying enforcement of the substantial equivalence laws for a "phase-in period" lasting from two-and-a-half to eight years (depending on the students' grade levels) for nonpublic schools that take advantage of certain examination pathways.

125. The May 2025 Amendment and certain provisions of the 2022 Regulations deny the individual plaintiffs and members of the plaintiff class their constitutional right to the opportunity for a sound basic education by providing certain "alternative pathways" that

arbitrarily and unreasonably deem ultra-Orthodox Yeshivas and certain other nonpublic schools “substantially equivalent” and exempt them from meaningful and adequate on-site inspections and reviews, even though these schools are not actually providing their students substantially equivalent instruction in English, math, science, social studies, American history and civics.

126. The state has for the past 136 years delegated to LSAs the responsibility for providing all students attending nonpublic schools the opportunity for a sound basic education and a substantially equivalent education. Most LSAs, including but not limited to the DOE, have failed to properly review the status of nonpublic schools in their geographic areas and/or have unreasonably delayed carrying out their responsibility to conduct these reviews on a timely basis.

127. SED’s regulations and guidance documents for Pathway 7 delineate the extensive procedures LSAs must follow to undertake site visits and inspections properly. Specifically, they must a) review the competence and qualifications of the teachers; b) confirm that English is the language of instruction for common branch subjects; c) ensure that students who have limited English proficiency are provided with instructional programs enabling them to make progress toward English language proficiency; and d) certify that instruction is provided in every grade level in English language arts, mathematics, social studies, science, civics, American and New York State history and other subjects. LSAs are also expected to examine specific evidence in making these determinations, including but not limited to specific documents and sources such as a) lesson plans, course outlines, scopes and sequences; b) observation of instruction; c) student textbooks and workbooks (including evidence that these materials are being used in the classroom); and d) student grades and/or assessment results. On information and belief, many LSAs, and the majority of LSAs with substantial numbers of ultra-Orthodox Yeshivas in their

geographic areas, do not adhere to these requirements, and SED has in place no procedures or processes for monitoring LSA compliance with these requirements.

128. On information and belief, many LSAs throughout the state, including but not limited to the DOE, utilize some of the other pathways inappropriately in order to avoid having to undertake extensive Pathway 7 reviews or because they lack the resources, ability, and or motivation to undertake proper reviews and inspections of nonpublic schools a timely manner.

129. Although the constitutional and statutory requirements for providing all students attending nonpublic schools the opportunity for a sound basic education and a substantially equivalent education have been in effect for over 135 years, the state has not enforced these requirements effectively throughout this time period. Moreover, in recent years, the governor and the legislative defendants have actively impeded efforts by the Board of Regents and the Commissioner of Education to enforce these constitutional and statutory provisions and have denied the Board of Regents and SED sufficient funding to adequately supervise and enforce these requirements.

130. Proper enforcement of the constitutional right to the opportunity for a sound basic education and of the substantial equivalence statutes and regulations requires the Regents, the commissioner, and SED to actively monitor implementation of compliance by nonpublic schools of students' rights to a sound basic education and a substantially equivalent education and to take direct responsibility for making substantial equivalence determinations and periodic on-site school inspections, as necessary, and requires the governor and the legislature to provide the Regents, SED, and the commissioner adequate funding to support these activities.

II. EDUCATION LAW § 3204, AS AMENDED BY THE MAY 2025 AMENDMENT AND BY THE FELDER AMENDMENT, IS ARBITRARY, CAPRICIOUS, AND UNREASONABLE

The May 2025 Amendment

131. Education Law § 3204 (6) (a) (vi) is arbitrary, capricious, and unreasonable on its face because it allows nonpublic schools to be deemed in compliance with the substantial equivalence laws if their students score at proficient levels “in the same subject areas and for the same grade levels” as students in the local school district or in the state as a whole, in the “annual New York state testing program to comply with the federal Every Student Succeeds Act.” The federal Every Student Succeeds Act requires testing in the areas of English Language Arts and, to a limited extent, in science, *but the federal Every Student Succeeds Act does not require any testing whatsoever in history, social studies, or civics*. This means that nonpublic schools can be deemed in compliance with the state’s compulsory education laws even if their students know no history, geography, or civics, have no knowledge of the Federal or New York State Constitutions, and have had no exposure to other subjects and experiences specifically deemed by the state to be critical parts of a sound basic education.

132. Education Law § 3204 (6) (a) (vii) is arbitrary, capricious, and unreasonable on its face for at least three reasons:

(a) It allows nonpublic schools to be deemed in compliance with the substantial equivalence laws if they merely “*administer*” year-end examinations to their students in ELA, math, and science, and use the results to assess the school’s educational program, *regardless of whether any of their students actually pass these examinations*, so long as a school’s average three-year *participation rate* is equal to or greater than the statewide

three-year average participation rate and the school claims that it will use the test results to assess and improve its educational program;

(b) It permits schools to utilize “a nationally-recognized, commercially published norm-referenced achievement test that is . . . recognized and used in at least three other states . . .” (Educ Law § 3204 [6] [vii] [b] [i] [1]). This means that nonpublic schools can be deemed in compliance with New York’s compulsory education laws *if their students merely sit for* a commercially published examination that, say, Mississippi, Hawaii, or North Dakota may have chosen to use, *even if they do not reach any specific proficiency level on such an examination*. Furthermore, there is no reasonable basis for assuming, as the statute implicitly does, that the substantial equivalence requirements in every other state are aligned with those in New York or that these nationally-recognized, commercially published achievement tests adequately assess the knowledge, skills, and abilities identified by the State of New York as being important for all of its students; and

(c) It merely requires that students take the nationally-recognized examinations described above “in substantially the same subject areas and same grade levels as the annual New York state testing program to comply with the federal Every Student Succeeds Act.” As noted above, the federal Every Student Succeeds Act requires testing in the areas of English Language Arts, and, to a limited extent, in science—*but it does not require any testing whatsoever in history, social studies, or civics*. This means that nonpublic schools can be deemed in compliance with the state’s compulsory education laws under this provision even if their students know no history, geography, or civics, have had no knowledge of the Federal or New York State Constitution and have had no

exposure to other subjects and experiences specifically deemed by the state to be critical parts of a sound basic education.

133. Education Law §§ 3204 (6) (a) (vi) and (vii) are arbitrary, capricious, and unreasonable on their face, because they undermine the purpose of the substantial equivalence laws by permitting nonpublic schools to be deemed compliant if they administer to their students certain annual year-end examinations in a limited number of subjects areas and that cover only limited aspects of those subject areas, without demonstrating that the instructional program as a whole provides education that is, in fact, substantially equivalent to the education received by students enrolled in New York State's public schools.

134. Education Law § 3204 (6) (b) (iii) is also arbitrary, capricious, and unreasonable because it stays enforcement of the substantial equivalence laws for a "phase-in period" lasting from two-and-a-half to eight years (depending on the students' grade levels) for nonpublic schools that take advantage of the new Pathway 6 assessments, even though:

- (a) nonpublic schools in New York State have been on notice since 1894 of the substantial equivalence requirements of the state's compulsory education law;
- (b) SED has provided specific oral and written guidance to nonpublic schools regarding their obligations under the substantial equivalence laws since at least 1980;
- (c) in 2018, SED promulgated extensive written guidelines on its website and elsewhere that provided LSAs and nonpublic schools extensive information about their obligations under the substantial equivalence laws and how to comply with those laws and required them to come into compliance by 2021;

- (d) in developing its 2022 Regulations, SED, in compliance with the State’s Administrative Procedure Act, provided LSAs, parents, nonpublic school administrators, and advocates for nonpublic schools, including advocates supporting the ultra-Orthodox Yeshivas, with extensive information about the substantial equivalence laws and provided them numerous opportunities to review and comment on drafts of the regulations;
- (e) the 2022 Regulations required LSAs to complete reviews of all nonpublic schools within their geographic areas and to render substantial equivalence determinations by the end of the 2024-2025 school year;
- (f) the DOE and other LSAs throughout the state had, in fact, completed reviews and rendered preliminary or final substantial equivalence decisions for many nonpublic schools, including all of the 28 Yeshivas identified in the 2015 Non-Compliance Letter, by the end of the 2023-2024 school year, and had offered non-compliant schools opportunities for mediation, technical assistance and consultation as required by the 2022 Regulations; and
- (g) by May 2025, the procedures to enforce the requirements of the substantial equivalence laws set forth in the 2022 Regulations had already been “phased in” throughout the state.

135. Adopting a phase-in period of up to eight years after regulations regarding compliance with the substantial equivalence laws had already been “phased in” and many investigations and reviews had been completed throughout the state serves no valid public purpose. This phase-in period was adopted solely to allow many non-compliant ultra-Orthodox

Yeshivas a basis for avoiding or further delaying their compliance with the state’s substantial equivalence laws.

136. Education Law § 3204 (6), which was added by the May 2025 Amendment, is arbitrary, capricious, and unreasonable because it also provides unjustifiable exemptions from the detailed instructional program reviews outlined above for nonpublic schools that meet the following other alternative pathways:⁷

- A “registered” high school: Education Law § 3204 (6) (a) (i) permits a nonpublic high school to qualify as being substantially equivalent if it is “registered” by the Board of Regents upon the recommendation of the commissioner pursuant to 8 NYCRR 100.2 (p). Registered high schools may issue diplomas and administer Regents’ examinations. On information and belief, nonpublic high schools are “registered” based on a paper review process and a minimal on-site visit that does not include the extensive on-site inspection and document review process concerning evidence of substantial equivalence that is required for Pathway 7 reviews under 8 NYCRR § 130.9. Furthermore, on information and belief, SED undertakes no periodic reviews of “registered” schools comparable to the periodic reviews that it requires LSAs to undertake for schools examined under Pathway 7.
- An “affiliated” school: Education Law § 3204 (6) (a) (i) also permits an exemption from detailed Pathway 7 reviews for a “nonpublic school serving grades one through eight that has a registered high school.” The fact that a registered high school has been found to be in compliance based on at least a minimal review provides no reasonable basis for

⁷ The pathways identified in this paragraph had been and remain incorporated in the 2022 Regulations. Accordingly, those aspects of the 2022 Regulations are also arbitrary, capricious, and unreasonable and invalid for all the same reasons that are cited in the text.

assuming that, at the affiliated school, which has undergone no inspection or review whatsoever by SED, the teachers are, in fact, competent, the curriculum includes all of the subject areas required by the substantial equivalence laws, instruction is provided in English, and the needs of students with limited English language proficiency are being met. On information and belief, these subjects are not taught at many elementary-level ultra-Orthodox Yeshivas, even though they may be taught at their “affiliated” high schools and such instruction is specifically required by Education Law § 3204 (3). The only standard for affiliation set forth in the statute is sharing certain SED code numbers with the registered school (*see* Educ Law § 3204 [6] [b] [iv]). On information and belief, SED assigns such code numbers without any review, inspection, or investigation of whether the elementary or middle school, in fact, has any actual administrative connection or shares any instructional standards and practices with the registered high school (Educ Law § 3204 [6] [b] [iv]).

137. On information and belief, the majority of ultra-Orthodox Yeshivas throughout the state that have been deemed substantially equivalent over the past decade have qualified under the arbitrary, capricious, and unreasonable registration and affiliation exemption pathway (Pathway 1) without undergoing any reviews of their actual teacher qualifications and instructional programs.

138. Education Law § 3204 (6) (a) (iii) allows a nonpublic school to qualify for the “accreditation” pathway (Pathway 3) if the school is accredited by an accrediting agency that, *inter alia*, uses “a peer review process that includes evaluation by leaders of similar nonpublic schools.” In the case of ultra-Orthodox Yeshivas, most of the “similar nonpublic schools” are schools that have historically failed to comply with New York State’s substantial equivalence

requirements and are affiliated with movements that have publicly stated their intention to defy the state and to continue to resist compliance with the state’s substantial equivalence requirements. Accordingly, in this context, the alternative pathway that allows for accreditation through “evaluation by leaders of similar nonpublic schools” is arbitrary, capricious, and unreasonable. Such evaluations should be done by leaders of nonpublic schools who have demonstrated understanding of, and commitment to, compliance with the state’s substantial equivalence requirements. For similar reasons, the requirement in this provision that the accrediting agency “appropriately train all staff and peer reviewers who are involved in the accreditation process” should specify that all such staff and peer reviewers be trained in New York State’s specific substantial equivalence requirements.

139. The provision of Education Law § 3204 (6) (a) (iii) that provides for a five-year “provisional” accreditation status for schools that have been awarded “provisional status” by an accreditation agency approved by the commissioner is arbitrary, capricious, and irrational on its face. Prior to the May 2025 Amendment, the SED had specifically informed nonpublic schools that “provisional accreditation may precede full accreditation from an accreditor” but that it “*does not satisfy the accreditation pathway*” (emphasis added) (New York State Education Department, Substantial Equivalency 2023 Guidance, at 12). In addition, this provision provides neither any standard for how “provisional status” is to be determined nor any definition of what the term actually means.

140. Pursuant to Education Law § 3204 (6) (b) (iv), at least for the phase-in period, all “affiliated schools” of schools that are deemed substantially equivalent based on a “provisional accreditation” will also be deemed substantially equivalent, even though there is no requirement that the approved accrediting agency has even visited or examined the affiliated school.

141. The eligibility definition that limits the application of the Felder Amendment to ultra-Orthodox Yeshivas, Education Law § 3204 (2) (ii) and (iii), is arbitrary, capricious, and irrational on its face because it does not provide any explicit justification or rationale for requiring differential treatment for ultra-Orthodox Yeshivas, as compared with other nonpublic schools that are also subject to the substantial equivalence laws. Furthermore, this special treatment for ultra-Orthodox Yeshivas cannot be justified by an implied rationale of protecting the cultural values and traditions of a religious community because its differential treatment is provided *only* to ultra-Orthodox Yeshivas and not to Amish schools in upstate New York, to any other religious schools, or to any nonreligious independent schools that have been established to promote particular cultural values or traditions.

III. EDUCATION LAW § 3204, AS AMENDED BY THE FELDER AMENDMENT AND THE MAY 2025 AMENDMENT IS UNCONSTITUTIONAL BECAUSE IT IS VOID FOR VAGUENESS

142. Specific provisions of Education Law § 3204 are unconstitutionally vague because they fail to provide fair notice of the behaviors or actions that the law requires, and they fail to provide clear standards for enforcement.

143. The Felder Amendment, codified as Education Law § 3204 (2) (ii), (ii), and (iii), sets forth alternative criteria for assessing compliance by ultra-Orthodox Yeshivas at both elementary and secondary school levels. But these provisions introduce such criteria by stating that: “For purposes of considering substantial equivalence pursuant to this subdivision . . . the department shall consider the following, *but not limited to* . . .” (emphasis added) (Educ Law § 3204 [2] [ii]-[iii]). This may be read to mean that, in addition to the stated curricular requirements set forth in these paragraphs, the commissioner is also empowered to apply to these schools some or all of the original substantial equivalence requirements defined elsewhere in other subdivisions of § 3204, or those defined in the other substantial equivalence statutes or

regulations—as well as undefined additional requirements that the commissioner may choose to impose. Thus, these provisions provide no clear indication as to what standards may apply. These provisions also improperly delegate legislative authority to the commissioner in violation of NY Constitution, article III, § 1.

144. Education Law § 3204 (2) (iii), the provision of the Felder Amendment that deals with high schools in ultra-Orthodox Yeshivas, provides that:

“For purposes of considering substantial equivalence, . . . the department shall consider the following but not limited to: if the curriculum provides *academically rigorous instruction* that develops *critical thinking skills* in the school’s students, the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education” (emphasis added) (Educ Law § 3204 [2] [iii]).

The terms “academically rigorous instruction” and “critical thinking skills” are vague on their face, and there are no accepted legal or professional definitions for either of these terms. The vagueness of these terms bars clear comparisons with analogous educational experiences that are provided to students in New York State public schools, thus precluding their use as methods “[f]or purposes of considering substantial equivalence”

145. Education Law § 3204 (2) (iii), as quoted in the previous paragraph, after defining a Yeshiva’s high school curriculum requirements in vague, conclusory terms concludes by saying that the outcome of the curriculum must “result in a sound basic education.” This proviso renders this entire provision meaningless. “Sound basic education” is the term the Court of Appeals has used to define the purpose of education as required by NY Constitution, article XI, § 1. The Court of Appeals defined a “sound basic education” to mean “minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas,” that “provides schoolchildren the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants” (*CFE II*, 100 NY2d at 907-08).

Thus, to provide their students “a sound basic education,” ultra-Orthodox Yeshivas must at a minimum teach their students basic skills in the specific areas of reading, writing, mathematics, science and social studies, and not merely the “critical thinking skills” that may be developed through studies of the Bible, the Talmud, or other Jewish texts.

146. Furthermore, this education must specifically prepare students to function productively as civic participants, who are well-prepared for “voting and jury service because they are the civic responsibilities *par excellence*” (*id.* at 906-07). These civic skills that relate to modern society and its political structure also cannot be taught solely through classical Jewish texts. Thus, the curricula in high schools covered by the Felder Amendment, whatever other “critical thinking skills” they may develop, must also provide instruction in the same specific subject areas that will result in the same type of “sound basic education” that is afforded to students in New York State’s public schools.

147. Education Law § 3204 (6) (a), added by the May 2025 Amendment, provides that nonpublic schools that choose the new assessment pathways permitted by Education Law § 3204 (6) (vi) and (vii) “shall thereby qualify as and be *finally* recognized to be at least substantially equivalent” (emphasis added) (Educ Law § 3204 [6] [a]).⁸ However, at the same time, as discussed above in ¶ 107, the May 2025 Amendment establishes a “phase-in period” that “shall end after the two thousand thirty-two--two thousand thirty-three school year” (Educ Law § 3204 [6] [b] [iii]). Thus, the statute now creates an ambiguity as to whether schools that satisfy the assessment requirements of the statute during the phase-in period must continue to test their students in accordance with the assessment provisions of the statute or whether compliance

⁸ This provision also implies that a high school (and all affiliate schools) that meet registration requirements at one point in time retains that status permanently and “finally,” whether or not the school maintains competent teachers and substantially equivalent curricula and instruction in later years.

during a single year during the phase-in period will “finally” and, therefore, permanently establish that school as being substantially equivalent.

148. Education Law § 3204 (6) (b) (i) (1)—the provision that permits the use of certain nationally-recognized, commercially published achievement tests to meet the Pathway 6 assessment requirement—also requires all assessments and assessment materials used by a nonpublic school to be “respectful of cultural curricula and pedagogy;” however, it does not indicate what counts as “cultural” curricula nor does it specify what it means for an assessment or assessment materials to be “respectful” of such curricula. The absence of such necessary details makes it impossible for a school to know how to comply with the provision and renders it unconstitutionally vague.

CLASS ACTION ALLEGATIONS

149. The individual plaintiffs bring this action on their own behalf and, pursuant to CPLR 901, on behalf of all other persons similarly situated. The class is composed of all students a) currently attending nonpublic ultra-Orthodox Yeshivas who are not receiving the opportunity for a sound basic education and an education that is substantially equivalent to the education being provided in New York State’s K-12 public schools; and b) students who graduated from or attended and completed their education at ultra-Orthodox Yeshiva high schools within the past five years and who did not receive the opportunity for a sound basic education and an education that is substantially equivalent to the education being provided in New York State’s K-12 public schools while attending those Yeshivas.

150. On information and belief, the class consists of approximately 100,000 current students, and an unknown number of students who have graduated from ultra-Orthodox Yeshivas within the past five years and who have been harmed by the inadequate educational opportunities their schools provided. However, the precise number is within the knowledge of the defendants,

and its specific formulation must await discovery and hearing. The class is so numerous that individual joinder of all members is impracticable.

151. This case raises questions of law and fact common to all members of both classes including, but not limited to:

a. The defendants' failure to effectively enforce NY Constitution, article XI, § 1, Education Law § 3204, and other provisions of the state's compulsory education law with respect to ultra-Orthodox Yeshivas;

b. The failure of the vast majority of ultra-Orthodox Yeshivas to provide adequate instruction of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, social studies, and civics by sufficient personnel adequately trained to teach those subject areas, which denies their students the opportunity for a meaningful high school education that prepares them to function productively as civic participants capable of voting and serving on a jury;

c. The legislature's adoption through the Felder Amendment and the May 2025 Amendment of statutory provisions applicable only to ultra-Orthodox Yeshivas that are arbitrary, capricious, and unreasonable; that are vague and fail to provide plaintiffs fair notice of the applicable policy requirements; and that preclude effective enforcement of NY Constitution, article XI, § 1, Education Law § 3204, and other provisions of the state's compulsory education law.

152. The interpretation and application of NY Constitution, article XI, § 1, Education Law § 3204, and other provisions of the state's compulsory education law to the underlying controversy of this case concerning defendants' conduct, or their failure or refusal to act, would have a class-wide impact. Further, the defendants have acted or refused to act on grounds that

apply generally to the class, so that final declaratory relief or corresponding injunctive relief that requires appropriate educational reforms and compensatory education for those harmed by the inadequate education they received in the past is appropriate with respect to the class as a whole.

153. The claims of the individual plaintiffs are typical of the claims of the class as a whole. The individual plaintiffs all attend or attended ultra-Orthodox Yeshivas that are not providing or did not provide them the opportunity for a sound basic education and an education that is substantially equivalent to the education being provided in New York State's public K-12 schools. The representative plaintiffs do not have any conflicts of interest and will fairly and adequately protect the interests of the class. Plaintiffs are represented by qualified, experienced counsel who will competently represent the interests of the class.

154. A class action is appropriate and necessary in this case and is superior to other available methods for the fair and efficient adjudication of the controversy, because prosecution of separate actions by individual members of the class would create a substantial risk of inconsistent or varying adjudications with respect to the enforcement of NY Constitution article XI, § 1, Education Law § 3204, and other provisions of the state's compulsory education law, and would preclude a coordinated structural solution to the common problems.

155. Class action designation is necessary because the relief sought in this case is of the nature that requires urgent adjudication and cannot await individual determination. Class designation would ensure final adjudication of important questions of law raised in this case, which affect a class of approximately 100,000 current students and a substantial number of recent graduates. Class action designation is also necessary to preclude defendants from undertaking partial enforcement actions, as they have in the past, that may meet the educational needs of one or more of the individual plaintiffs and some members of the class while continuing

their systematic violations of law and, therefore, without remedying the injuries suffered by numerous unnamed members of the plaintiff class.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

156. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-155 above.

157. Defendants have violated the right to the opportunity for a sound basic education of the individual plaintiffs and the members of the plaintiff class by allowing the ultra-Orthodox Yeshivas to deny them adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies by sufficient personnel adequately trained to teach those subject areas and by denying them the opportunity for a meaningful high school education that prepares them to function productively as civic participants capable of voting and serving on a jury.

SECOND CAUSE OF ACTION

158. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-157 above.

159. Defendants have denied the individual plaintiffs and the members of the plaintiff class their constitutional, statutory and regulatory rights to a substantially equivalent education by enacting and implementing laws and regulations that permit the ultra-Orthodox Yeshivas they attend to utilize various “Pathways” that allow them to be deemed in compliance with the compulsory education laws and regulations without fairly and accurately assessing whether the schools they attend or attended are, in fact, providing a substantially equivalent education.

THIRD CAUSE OF ACTION

160. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-159 above.

161. Defendants have denied the individual plaintiffs and the members of the plaintiff

class their constitutional right to a sound basic education by enacting and implementing the “Felder Amendment,” which allows ultra-Orthodox Yeshivas that do not, in fact, provide their students with a substantially equivalent education to be deemed substantially equivalent by exempting these schools from specific statutory requirements of Education Law § 3204 and other substantial equivalence statutes and regulations that are necessary for providing student the opportunity for a sound basic education and that are applicable to all other nonpublic schools.

FOURTH CAUSE OF ACTION

162. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-161 above.

163. Defendants have denied the individual plaintiffs and the members of the plaintiff class their right to a substantially equivalent education by enacting and implementing the Felder Amendment and the May 2025 Amendment that (1) arbitrarily, capriciously, and unreasonably delay the actual implementation of most aspects of the substantial equivalence laws and regulations for 2½ to 8 years, and (2) provide arbitrary, capricious, and unreasonable “alternative pathways” that allow many ultra-Orthodox Yeshivas to be deemed in compliance with the compulsory education laws and regulations without fairly and accurately assessing whether these Yeshivas are, in fact, providing their students a substantially equivalent education.

FIFTH CAUSE OF ACTION

164. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-163 above.

165. Defendants State of New York and Governor Hochul have denied the individual plaintiffs and the members of the plaintiff class their right to due process of law under NY Constitution, article I, § 6 by including in the Felder Amendment and the May 2025 Amendment vague and ambiguous language that denies them fair notice of their legal responsibilities and prevents effective enforcement of their constitutional, statutory, and regulatory rights to a

substantially equivalent education.

SIXTH CAUSE OF ACTION

166. Plaintiffs repeat and re-allege all of the allegations set forth in ¶¶ 1-165 above.

167. Defendants have denied the individual plaintiffs and the members of the plaintiff class their right to a sound basic education and a substantially equivalent education by failing to grant the Board of Regents and the Commissioner of Education sufficient authority and adequate funding to allow them to effectively implement and enforce the state's substantial equivalence statutes and regulations in regard to ultra-Orthodox Yeshivas.

REQUEST FOR RELIEF

PLAINTIFFS respectfully request on their own behalf and on behalf of all others similarly situated that this Court:

1. Determine by Order that this action may be maintained as a class action;
2. Enter a final judgment:
 - a. Declaring that all students attending nonpublic schools in the State of New York have a constitutional right under NY Constitution, article XI, § 1 to the opportunity for a sound basic education that includes adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas and to the opportunity for a meaningful high school education that prepares them to function productively as civic participants capable of voting and serving on a jury; and
 - b. Declaring that Education Law § 3204 (2) (ii), (iii) and (iv) ("the Felder Amendment") and Education Law § 3204 (6) ("the May 2025 Amendment") are

arbitrary, capricious, and unreasonable, void for vagueness, and, therefore, invalid and null and void; and

c. Declaring that 8 NYCRR § 130.3 (a) (1), which permits “alternative pathways” based on registration and affiliated schools criteria, is invalid and null and void because it allows ultra-Orthodox schools to be deemed in compliance with substantial equivalence laws and regulations without fairly and accurately assessing whether these Yeshivas are, in fact, providing students a substantially equivalent education; and

d. Declaring that language in 8 NYCRR § 130.3 (a) (3), which permits an “alternative pathway based on accreditation to be undertaken by “evaluation by leaders of similar nonpublic schools” and that fails to explicitly require training of accreditors to include training in New York State’s substantial equivalence requirements, is invalid and null and void, because it allows ultra-Orthodox Yeshivas to be deemed in compliance with substantial equivalence laws and regulations based on evaluations by individuals operating similar schools that are not providing their students a substantially equivalent education and who are not properly trained to evaluate nonpublic schools in New York State; and

e. Enjoining the defendants, their successors in office, agents and employees to adopt such laws, regulations, policies, and practices as are necessary to ensure that the individual plaintiffs and the members of the plaintiff class are provided (1) meaningful educational opportunities to obtain a sound basic education that will prepare them to function productively as civic participants and as capable

voters and jurors, and (2) an education that is substantially equivalent to the education provided to students in the State's public schools; and

- f. Enjoining the defendants, their successors in office, agents, and employees from delegating responsibility for implementing and enforcing the substantial equivalence laws and regulations regarding ultra-Orthodox Yeshivas to LSAs and requiring the defendants to provide the Board of Regents, the commissioner of education and the State Education Department sufficient authority and adequate funding to allow them to effectively implement and enforce the state's substantial equivalence statutes and regulations in regard to ultra-Orthodox Yeshivas; and
- g. Requiring the defendants, their successors in office, agents, and employees to provide compensatory educational services that will prepare plaintiff I.J., and other members of the plaintiff class who have completed within the past five years their education at an ultra-Orthodox Yeshiva high school that did not provide them a substantially equivalent education, that allows them to function productively as a civic participant capable of obtaining competitive employment and capably voting and serving on a jury; and
- h. Awarding plaintiffs their costs, disbursements, and reasonable attorneys' fees and expenses; and

3. Retain jurisdiction of this case until such time as the defendants have demonstrated to the Court's satisfaction that they are effectively implementing in regard to ultra-Orthodox Yeshivas NY Constitution, article XI, § 1, Education Law § 3204, and all other substantial equivalence laws and regulations.

4. Grant such other alternative or additional relief as the Court may deem just and proper under the circumstances.

Dated: September 17, 2025

Respectfully submitted,



MICHAEL A. REBELL, ESQ.
375 Riverside Drive
New York, NY 10025
(917) 576-7301
rebellattorney@gmail.com

MICHAEL GREGORY, ESQ.⁹
YOUTH ADVOCACY & POLICY LAB
Harvard Law School
23 Everett Street, 2nd Floor
Cambridge, MA 02138
(339) 226-2637
mgregory@law.harvard.edu

ERIC HUI-CHIEH HUANG
LINDA MOON
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
295 5th Avenue
New York, NY 10016
(212) 849-7000
erichuang@quinnemanuel.com

Attorneys for Plaintiffs

⁹Motion to appear pro hac vice forthcoming.