N.Y.S. COALITION FOR INDEPENDENT & RELIGIOUS SCHOOLS

- Agudath Israel of America
- Association of Christian Schools International / NYS
- Jewish Education Project
- Lutheran Schools Association
- NYS Association of Independent Schools
- NYS Catholic Conference

Date: November 22, 2023

To: Office of Counsel
NYS Education Department

Re: Proposed Amendment to Sections 3.23 and 3.26 of Title 8 NYCRR

With the September 27th publication of the above referenced proposed rules, the NYS Coalition for Religious and Independent Schools and partner organizations offer the following comments:

Concerning the proposed amendment to section 3.23

The stated purpose of this amendment is "to require a $10 fee for certificates of existence and for certified copies of charter actions taken by the Board of Regents." Given that this inconsequential proposal is substantially unrelated to the proposed amendment to section 3.26, it should be decoupled from the amendment to section 3.26 and considered separately so that the amendment to 3.26 can receive proper consideration. Moreover, since it was acknowledged (during the presentation of this item during the Regents' September meeting) that the State Administrative Procedures Act permits the Board of Regents to establish such fees without going through the rule making process, we propose the amendment be withdrawn not only to avoid distracting the Regents' needed attention away from the far more substantive amendment to section 3.26, but to avoid any further waste of the Regents' valuable time.

Concerning the proposed amendment to section 3.26

There was no presentation of this item during the Regents' September meeting. Instead, it was bundled together with the proposed amendments to section 3.23 and described as "relating to fees." That was not an accurate description of the proposed amendment to section 3.26.

The stated purpose of the proposed amendment is to "update" such section, ostensibly because the "provision hasn't been amended since it was enacted in 1971." The proposed amendment goes far beyond a simple update and instead transforms the relationship between independent and religious schools and the state and arrogates to the department authority that it does not have and was not provided by the Legislature.

Although on the surface it appears that the proposed amendment would not apply to schools organized under the Religious Corporation Law, virtually all religious and independent schools would be subjected to its provisions. The amendment explicitly applies to *any* "domestic not for profit corporation," and a school incorporated under the Religious Corporation Law is (by operation of law) a domestic not for profit corporation.

The proposed amendment, therefore, would impose upon religious and independent schools all statutes, rules and regulations that would be applicable to a for-profit corporation and other educational institutions formed under Education Law 216 – even though SED has treated non-profit elementary and high schools as not subject to the provisions of such section. Even more significantly, it gives SED the authority to direct the domestic not for profit corporation to delete from their certificate of incorporation or other foundational documents "the provisions authorizing the corporation to operate a school or educational program," comparing the authority of SED to do so with its ability to direct "the revocation of a charter granted . . . for the purpose of authorizing the corporation thereby created to operate a school."

Simply stated, this amendment gives SED the authority to order the closure of any elementary or high school that it finds is not in compliance with "all statutory provisions Rules of the Regents and Regulations of the Commissioner."

Not only does this provision far exceed the powers given to SED by the legislature, it violates the establishment and free exercise clauses of the 1st Amendment to the US Constitution. Further, the proposal appears contrary to the decision of the Albany Supreme Court this past March which struck from the Part 130 substantial equivalence regulations the provisions regarding closing and penalizing private schools and directing parents to enroll their children elsewhere.

Given the existence of the BEDS and SEDREF systems, appropriate mechanisms already exist for the collection of any data necessary for operational transparency of our schools.

The proposed amendment is not only unnecessary, it constitutes an unacceptable over-reach by SED.

On behalf of the nearly 1,800 schools our respective organizations represent, we urge the Regents to reject the proposed rule changes.

- Agudath Israel of America
- Association of Christian Schools International / NYS
- Association of Waldorf Schools of North America
- Atlantic Union Conference of Seventh-day Adventists, Education Department
- Bruderhof
- Catholic School Administrators Association of NYS
- Council for American Private Education
- Greater New York Conference of Seventh-day Adventists, Education Department
- Greek Orthodox Archdiocese of America
- Islamic Schools Association
- Jewish Education Project
- Lutheran Schools Association
- New York Association of Christian Schools
- New York Conference of Seventh-day Adventists, Education Department
- Northeastern Conference of Seventh-day Adventists, Education Department
- NYS Montessori Alliance
- NYS Association of Independent Schools
- NYS Catholic Conference / Council of Catholic School Superintendents
- Orthodox Union
- TEACH NYS
- Torah Umersorah: The National Society for Hebrew Day Schools
- UJA-Federation of New York