

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of the Petition of :

NEW YORK STATE ASSOCIATION OF : **Index No.** _____

INDEPENDENT SCHOOLS, THE ALBANY :

ACADEMIES, THE BREARLEY SCHOOL, :

BUCKLEY COUNTRY DAY SCHOOL, THE GOW :

SCHOOL, THE HARLEY SCHOOL, LITTLE RED :

SCHOOL HOUSE & ELISABETH IRWIN HIGH :

SCHOOL, THE PACKER COLLEGIATE :

INSTITUTE, PROFESSIONAL CHILDREN'S : **Hon.** _____, **J.S.C.**

SCHOOL, SAINT DAVID'S SCHOOL, THE SPENCE :

SCHOOL, and STEPHEN GAYNOR SCHOOL, :

Petitioners, :

For a Judgment Pursuant to Article 78 of the New York : **VERIFIED PETITION**

Civil Practice Law and Rules :

-against- :

MARYELLEN ELIA, Commissioner of Education of :

the State of New York, and the NEW YORK STATE :

EDUCATION DEPARTMENT, :

Respondents. :

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Petitioners New York State Association of Independent Schools ("NYSAIS"), The Albany Academies, The Brearley School, Buckley Country Day School, The Gow School, The Harley School, Little Red School House & Elisabeth Irwin High School, The Packer Collegiate Institute, Professional Children's School, Saint David's School, The Spence School, and Stephen Gaynor School (collectively, "Petitioner Schools," and together with NYSAIS, "Petitioners") state the following as and for their Petition pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR") against respondents MaryEllen Elia, as Commissioner of Education of the State of New York (either by herself or through a representative) (the "Commissioner"), and the New

York State Education Department (the “Department,” and together with the Commissioner, “Respondents”):

PRELIMINARY STATEMENT

1. Petitioners file this Petition for a judgment vacating, annulling, reversing, voiding, and setting aside Respondents’ regulatory scheme to review and regulate independent schools¹ as embodied in various documents that they have publicly issued, including the “Substantial Equivalency Review and Determination Process” guidance dated November 20, 2018 (the “Guidance”), the “Local School Authority Review Toolkit” dated December 21, 2018 (the “Toolkit”), and the “Frequently Asked Questions on the Substantial Equivalency Guidance” (the “FAQ,” and together with the Guidance and the Toolkit, the “New Regulatory Scheme”).²

2. Petitioners bring this Article 78 action to prevent the Department from exercising unprecedented and illegal regulatory control over the independent schools of New York. In 1948, the New York Court of Appeals struck down an attempt by the Legislature to delegate to the Department authority to regulate and license independent schools by requiring them to meet certain requirements to register with the Department. The Court held that “it would be intolerable for the Legislature to hand over to any official or group of officials an unlimited, unrestrained, undefined power to make such regulations ... and to grant or refuse licenses to such schools depending on their compliance with such regulations.” *Packer Collegiate Institute v. University of the State of New York*, 298 N.Y.2d 184, 192 (1948) (“*Packer Collegiate*”).

3. The Court’s ruling was clear: any attempt by the Department to regulate and license independent schools would be unconstitutional unless it was based on statutes enacted by the

¹ For purposes of this Petition, “independent schools” has the same meaning as “nonpublic schools,” *i.e.*, those that are outside the public school system.

² The Guidance, Toolkit, and FAQ are attached hereto as Exhibits 1-3.

Legislature that gave the Department specific authority to regulate independent schools in specific areas to specific standards – and even then such regulation would still be subject to the constitutional limits of the State’s ability to intrude on the affairs of independent schools. In the seventy years since *Packer Collegiate* was decided, the Legislature has declined to enact any such legislation. Nevertheless, in 2017 the Department announced a plan to begin conducting regular reviews of all independent schools in New York to determine whether they are providing instruction substantially equivalent to that provided by public schools, as determined by educational standards that the Department itself would set. The Department also (i) ordered local school boards to conduct these reviews even though they lack the legal authority to do so, (ii) evaded the rule-making requirements of the State Administrative Procedure Act by not distilling the New Regulatory Scheme into a single body of formal regulations, but instead (iii) released a series of informal public communications that provided vague and changing “guidance” on how the local school boards were to make their determinations. As a result, the New Regulatory Scheme is an unconstitutional effort to control the curricula of independent schools through reviews conducted by unauthorized local school boards provided with no clear standards of what constitutes “substantially equivalent” education.

4. The Department has not cited any crisis in the quality of the education provided by independent schools to justify the imposition of a regular inspection scheme over all independent schools. The Department has never before expressed a need to regulate the curricula or operations of all independent schools for good reason: these schools provide some of the best educational experiences New York has to offer, have impeccable reputations, have developed their own private accreditation system through NYSAIS, and, because they charge tuition, are effectively regulated by the marketplace. In creating an unnecessary solution for a nonexistent problem, the Department

has created an illegal, unconstitutional and chaotic regulatory scheme that, for the reasons set forth below, must be stayed immediately and deemed unenforceable.

JURISDICTION AND VENUE

5. This Court has jurisdiction to hear this matter pursuant to Article 78 of the CPLR.
6. Venue is proper in this Court pursuant to CPLR 7804(b) and CPLR 506(b)(2).
7. Petitioner NYSAIS is a non-profit corporation organized under the laws of the State of New York and chartered by the New York State Board of Regents, with its principal place of business at 17 Elk Street, Albany, New York 12207.
8. Petitioner The Albany Academies is a non-profit corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 135 Academy Road, Albany, New York 12208.
9. Petitioner The Brearley School is an education corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 610 East 83rd Street, New York, New York 10028.
10. Petitioner Buckley Country Day School is an education corporation organized under the laws of the State of New York with its principal place of business at 2 I.U. Willets Road, Roslyn, New York 11576.
11. Petitioner The Gow School is an education corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 2491 Emery Road, South Wales, New York 14139.
12. Petitioner The Harley School is a non-profit corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 1981 Clover Street, Rochester, New York 14618.

13. Petitioner Little Red School House & Elisabeth Irwin High School is an education corporation organized under the laws of the State of New York and registered with the Department, with its principal places of business at 272 Sixth Avenue, New York, New York 10014 (Lower/Middle School Campus) and 40 Charlton Street, New York, New York 10014 (High School Campus).

14. Petitioner The Packer Collegiate Institute is a non-profit corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 170 Joralemon Street, Brooklyn, New York 11201.

15. Petitioner Professional Children's School is a non-profit corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 132 West 60th Street, New York, New York 10023.

16. Petitioner Saint David's School is an education corporation organized under the laws of the State of New York with its principal place of business at 12 East 89th Street, New York, New York 10128.

17. Petitioner The Spence School is an education corporation organized under the laws of the State of New York and registered with the Department, with its principal place of business at 22 East 91st Street, New York, New York 10128.

18. Petitioner Stephen Gaynor School is an education corporation organized under the laws of the State of New York with its principal place of business at 148 West 90th Street, New York, New York 10024.

19. Respondent MaryEllen Elia is the Commissioner of Education of the State of New York, and has her principal place of business at 89 Washington Avenue, Albany, New York 12234.

20. Respondent the New York State Department of Education is the State agency

responsible for regulating, among other things, education within the State, and has its principal place of business at 89 Washington Avenue, Albany, New York 12234.

THE PETITIONERS

A. NYSAIS

21. NYSAIS is an association of independent schools located in New York State.

22. There are currently 192 independent schools that are members of NYSAIS.

23. NYSAIS represents the common interest of all of its members in obtaining the relief sought herein.

24. The Petitioner Schools represent a cross-section of NYSAIS member schools and represent a sampling of the different ways the New Regulatory Scheme would harm all NYSAIS member schools.

25. In 1968, the Board of Regents – the ultimate governing body responsible for education in the State – granted NYSAIS a charter to accredit independent schools in New York.

26. Since 1968, NYSAIS has been accrediting its member schools pursuant to a comprehensive, rigorous, and regularly updated accreditation process that ensures the schools are fulfilling their own stated standards and goals to provide their students with high-quality education.

27. NYSAIS itself is accredited by the International Council Advancing Independent School Accreditation, which provides quality assurance and accountability for the accreditation programs of its state, regional, and international independent school member associations.

28. NYSAIS currently accredits its member schools on a ten-year cycle, with an interim review occurring every five years.

29. Both the ten-year accreditation and five-year review process begin with twelve to eighteen months of self-study during which the school must define and describe not only its

mission, culture, and educational program (including its compliance with substantial equivalence requirements), but also its governance, financial sustainability, and overall operations. This self-study culminates in a detailed, written report, which is provided to the NYSAIS Visiting Committee overseeing the school's accreditation.

30. Shortly after submitting the self-study report, the school hosts a multi-day, onsite visit so the NYSAIS Visiting Committee can observe classes, activities, and other operations, and conduct interviews with students, teachers, parents, administrators, and members of the school's Board of Trustees.

31. During the accreditation process, NYSAIS assesses whether a school is meeting the standards and goals it set for itself in the self-study report, makes suggestions to help the school achieve those standards and goals, and provides the school with the best practices followed by other member schools.

32. NYSAIS also provides a list of eighty-three "Criteria for Evaluation and Accreditation," which the NYSAIS Visiting Committee uses to rate a school from "criterion fully and completely met" to "criterion not met in any respect."

33. Following the site visit, the NYSAIS Visiting Committee submits a confidential draft report to the school, the NYSAIS Commission on Accreditation, and the NYSAIS Board of Trustees.

34. Because the NYSAIS Visiting Committee's report is confidential, the school under review can be fully transparent in its self-assessment and goals, and thereby solicit honest feedback from NYSAIS that will allow the school to address any areas for improvement.

35. After full review and discussion of the report by the NYSAIS Commission on Accreditation and the NYSAIS Board of Trustees, the NYSAIS Board of Trustees votes on the

school's accreditation. NYSAIS then provides its accreditation decision to the school.

36. NYSAIS accreditation is a significant undertaking for the school under review, as the process takes approximately eighteen months and involves the dedication of hundreds if not thousands of hours by teachers, administrators, parents, and members of the school's Board of Trustees.

37. Upon information and belief, representatives of the Department have admitted during training sessions for the New Regulatory Scheme that they believe NYSAIS accreditation of a school would be proof that the school was providing substantially equivalent education.

38. Even if the New Regulatory Scheme is permitted to stand, the Petitioner Schools will continue to seek NYSAIS accreditation as a critical means both to ensure the quality of their education and operations and to demonstrate to parents of potential students that their schools meet the highest educational standards.

39. However, if the New Regulatory Scheme continues and requires independent schools to provide their NYSAIS accreditation materials to the local school boards reviewing them, it will have a chilling effect on the transparency and ultimate utility of the accreditation process. To the extent independent schools must share their accreditation information outside of NYSAIS, they will be less forthcoming and thus may not receive the best feedback to offer students the best educational experience.

B. The Albany Academies

40. The Albany Academy, founded in 1813, teaches boys in kindergarten through twelfth grade. The Albany Academy for Girls was founded in 1814 and teaches girls in kindergarten through twelfth grade. In 2007, The Albany Academy and Albany Academy for Girls merged to form petitioner The Albany Academies ("The Albany Academies"). The Albany

Academies is located within the Albany City School District and is one of the oldest and most prestigious independent schools in upstate New York.

41. The Albany Academies currently enrolls 825 students who reside in several different school districts within a fifty-mile radius of Albany.

C. The Brearley School

42. Petitioner The Brearley School (“Brearley”) is a girls’ college preparatory day school that spans kindergarten through twelfth grade and is located within New York City District #2. Founded in 1884, Brearley is one of the first schools in the country to educate girls for college by providing a liberal-arts curriculum known for its rigor and depth.

43. Brearley currently enrolls 724 students who reside in school districts throughout New York City, Westchester County, Nassau County, and New Jersey.

D. Buckley Country Day School

44. Petitioner Buckley Country Day School (“Buckley”) is a coeducational day school founded in 1923 for children in prekindergarten through eighth grade located within the Herricks School District. With a rigorous classical education as its foundation, Buckley prepares students for the most competitive high schools in the state and the country.

45. Buckley currently enrolls approximately 355 students who reside in forty-four different school districts throughout Nassau County and Queens. Only approximately 10% of Buckley students reside in the Herricks School District.

E. The Gow School

46. Petitioner The Gow School (“Gow”), founded in 1926, is a sixth to twelfth grade boarding and day school located in the East Aurora and Holland School Districts. By employing teaching methods so specialized and unique to its mission that some are copyrighted, Gow is

considered one of the best, if not the best, school in the world for students with dyslexia and similar language-based learning disabilities.

47. Of the 141 students currently at Gow, approximately 25% reside outside of the United States, 50% are residents of states other than New York, and only 25% are residents of school districts scattered throughout New York.

F. The Harley School

48. Petitioner The Harley School ("Harley") is a coeducational day school founded in 1917 and located in Brighton School District. Harley educates children from prekindergarten through twelfth grade in the progressive tradition.

49. Approximately 500 students currently attend Harley. Only about 25% of students reside in Brighton School District, where Harley itself is located. The rest reside in some thirty-five different school districts.

G. Little Red School House and Elisabeth Irwin High School

50. Petitioner Little Red School House and Elisabeth Irwin High School ("LREI"), located in New York City School District #2, is a coeducational day school that teaches prekindergarten through twelfth grade. LREI was founded in 1921 as a publicly funded school, but after about ten years it converted to an independent school to maintain its operations. LREI was one of the first progressive schools in New York City and continues to pioneer teaching methods that are later adopted by both public and independent schools.

51. Currently, about 660 students are enrolled at LREI. The majority reside in school districts within New York City, but approximately 4% reside in New Jersey.

H. The Packer Collegiate Institute

52. Petitioner The Packer Collegiate Institute ("Packer"), located in New York City

School District #13, is a coeducational day school that teaches prekindergarten through twelfth grade. Founded in 1845, Packer is one of oldest and most prestigious independent schools in the New York City area. In 1947, Packer challenged the constitutionality of a statute that would have provided the Department with unfettered power to regulate independent schools, leading to the *Packer Collegiate* decision that is of central importance to this Petition.

53. Approximately 1,040 students are currently enrolled at Packer. Of those, seventeen reside in New Jersey and two reside on Long Island.

I. Professional Children's School

54. Petitioner Professional Children's School ("PCS"), located in New York City School District #3, is a coeducational day school for students in sixth through twelfth grades who are professional or pre-professional artists, athletes, or entrepreneurs. Founded in 1914, PCS is the only independent school of its kind in the country. Because students enter PCS with different educational backgrounds and, in many cases, unusual schedules, PCS specializes in tailoring curricula to meet each student's individual needs and has developed proprietary systems for facilitating distance learning.

55. Currently, approximately 187 students attend PCS. Approximately 15% reside in states other than New York, approximately 20% of students reside outside of the United States, and the remainder reside in multiple school districts throughout New York.

J. Saint David's School

56. Petitioner Saint David's School ("Saint David's"), located in New York City School District #2, teaches boys in prekindergarten through eighth grade in the traditions of the Catholic Church. Founded in 1951, Saint David bases its education on the "Four Pillars" of Academics, Arts, Athletics, and Spirituality and strives to provide a moral as well as academic

education.

57. Saint David's currently has 435 students. While most of its students reside in various school districts within New York City, a small number reside in New Jersey.

K. The Spence School

58. Petitioner The Spence School ("Spence"), located in New York City School District #2, teaches girls from prekindergarten through twelfth grade. Founded in 1892, Spence offers a rigorous liberal-arts education and college preparatory experience.

59. Currently, 751 students attend Spence. Of those, ten students reside in New Jersey, one in Connecticut, and nine in New York school districts outside New York City. The remainder reside in various school districts within New York City.

L. Stephen Gaynor School

60. Petitioner Stephen Gaynor School ("Gaynor"), located in New York City School District #3, is a coeducational school that was founded in 1962 for students with learning disabilities, including dyslexia and attention-deficit hyperactivity disorder. Gaynor teaches children ages 3-14 years old, and provides each student an individualized, age-appropriate curriculum that emphasizes multisensory instruction.

61. Of the 388 students currently enrolled at Gaynor, thirteen reside in school districts in Westchester and Nassau Counties or New Jersey. The remainder reside in various school districts within New York City.

STATEMENT OF FACTS

A. Development of the New Regulatory Scheme

62. In or about 2017, the Department began to develop the New Regulatory Scheme

under which local school authorities (“LSAs”)³ would review independent schools in their districts every five years to determine whether the instruction those schools offered was meeting the obligation under Education Law § 3204(2) to “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” (“Substantially Equivalent Instruction”).

63. In December 2017, at a conference for independent schools in Albany, the Commissioner publicly announced the development of new “guidelines” that would provide the procedures and standards for conducting these reviews and would become the foundation of the New Regulatory Scheme.

64. The Commissioner indicated that she would order the LSA of the school district in which an independent school was located to conduct the Substantially Equivalent Instruction review of that school.

65. Upon information and belief, the Commissioner decided to order the LSAs to conduct these reviews because the Department lacks the resources to do so itself, not because the LSAs currently have or have ever exercised this power.

66. The Commissioner permitted interested parties, including Dr. Mark Lauria, Executive Director of NYSAIS, to review draft guidelines for the New Regulatory Scheme at the Department’s offices in Albany.

67. Through various correspondence sent in January and February 2018, Dr. Lauria urged the Commissioner to reconsider the New Regulatory Scheme, noting that the New

³ “School authorities” is defined in Education Law § 2(12) as “trustees, or boards of education, or corresponding officers, whether one or more, and by whatever name known, of a city school district or other school district however created.” It generally refers to the local school board of a district.

Regulatory Scheme was inconsistent with the Department's own interpretation of LSAs' authority over independent schools, would reverse decades of precedent, and would irreparably and unconstitutionally interfere with the independence of NYSAIS member schools.

68. Despite objections and feedback from NYSAIS and others, Respondents refused to amend or discontinue the New Regulatory Scheme.

69. As of January 2019, the Department had issued multiple public documents and statements purportedly describing how the New Regulatory Scheme will work, what the LSA review of the independent schools in its district should cover, and what standards would determine whether the independent schools are providing Substantially Equivalent Instruction.

70. The documents and statements include but are not limited to: (i) the Guidance; (ii) a Toolkit for LSAs; (iii) a similar toolkit for independent school administrators; (iv) a PowerPoint Presentation about the updated Guidance; (v) an FAQ; (vi) toolkits for schools subject to review by the Commissioner, as opposed to LSAs; (vii) materials provided during Department-hosted training sessions; (viii) statements made during the Department's training sessions; and (ix) articles and sections on the Department's official website (collectively, the "Regulatory Guidance Documents").

71. On or about November 20, 2018, the Department publicly issued the Guidance and the first version of the Toolkits.

72. On or about December 21, 2018, the Department issued a substantially revised version of the Toolkits.

73. The Department has amended and supplemented other portions of the Regulatory Guidance Documents.

74. Upon information and belief, the Department plans to continue to amend and

supplement the Regulatory Guidance Documents.

75. The information provided by the Regulatory Guidance Documents is not completely consistent and in many respects contradictory.

76. The Department has not memorialized the operation, criteria, and/or standards of the New Regulatory Scheme in a single document or body of proposed regulations.

77. In its current form, the New Regulatory Scheme requires LSAs to begin their reviews of independent schools in their districts in the 2018-2019 school year, with the expectation that all such reviews will be completed by the end of the 2020-2021 school year. (Ex. 1 at 3.)

78. An LSA's review culminates in a public vote to determine whether an independent school is providing Substantially Equivalent Instruction. (*Id.* at 7.)

79. After the initial inspection and review, an LSA "should plan to re-visit [independent schools] in their districts on a five-year cycle," and, between visits, should keep abreast of "important information, such as changes in leadership, curriculum, school building locations, grade levels served, etc." (*Id.* at 3.)

80. Under the New Regulatory Scheme, independent schools that are found not to be providing Substantially Equivalent Instruction would effectively be closed by the Department. After the preliminary finding that an independent school is not providing Substantially Equivalent Instruction, the school has a brief period to address the LSA's concerns; if the school is still found non-compliant, parents will have thirty days to transfer their children to a different school, and students who continue to attend the non-compliant school will be deemed "truant." (Ex. 1 at 7.)

81. The Department has never before implemented a plan to regularly inspect the curricula and teaching methods of all existing independent schools to ensure they are providing Substantially Equivalent Instruction.

82. The Department has not publicly cited any facts or data suggesting the existence of a pervasive problem with independent schools not providing Substantially Equivalent Instruction that would necessitate a regular review of the curricula and teaching methods of all independent schools.

B. The New Regulatory Scheme Is Illegal, Unconstitutional and Constitutes an Excess of Jurisdiction of the Department

83. The New Regulatory Scheme is illegal, unconstitutional and constitutes an excess of jurisdiction of the Department because: (i) in the absence of specific legislative authority, the Department lacks the power either to conduct regular reviews of all independent schools to determine whether they are providing Substantially Equivalent Instruction or to create its own standards for making that determination; (ii) the Department has ordered LSAs to conduct these reviews even though LSAs do not have this power under the Education Law and can only be granted this power by the Legislature, not an administrative agency like the Department; (iii) the standards set by the Department to be enforced by the LSAs are not set out in a single set of regulations but in various vague and changing communications from the Department that are highly susceptible to inconsistent and subjective application by the LSAs; and (iv) the New Regulatory Scheme is a set of “rules” that the Department has implemented without following the rule-making procedure under the State Administrative Procedure Act (“SAPA”).

i. In the Absence of Specific Legislative Authority, the Department Lacks the Power Either to Conduct Regular Reviews of All Independent Schools to Determine Whether They Are Providing Substantially Equivalent Instruction Or to Create Their Own Standards For Making That Determination

84. The Department in its current form was created in 1904 pursuant to the predecessor to Education Law § 101.

85. Throughout its history, the Department has only once before attempted to

implement a regulatory scheme under which it would review all independent schools to determine which should be allowed to continue to operate.

86. In 1947, an amendment to Education Law § 3210 required independent schools to register with the Department under regulations prescribed by the Board of Regents. This amendment also authorized the Department to promulgate its own set of educational standards that independent schools would have to meet in order to register, effectively vesting the Department with the power to close independent schools that the Department determined did not meet its standards.

87. Even though it was stipulated that Packer could meet these standards, Packer (one of the Petitioner Schools herein) filed an action challenging this amendment and the premise that the Department had the authority to force an independent school to meet educational standards it had set itself.

88. In 1948, the Court of Appeals decided *Packer Collegiate*, invalidating both the amendment and the regulatory scheme promulgated by the Department because the amendment failed to provide specific standards that independent schools would have to meet for registration. The Court found that this left the Department free to devise its own standards, which the Court characterized as a “patently unconstitutional” attempt to delegate Legislative authority to the Department.

89. The Court noted that state regulation of private schools was not a “small or technical matter” because the United States Supreme Court had already ruled that “[p]rivate schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools,” and that “[t]he Legislature, under the police power, has a *limited* right to regulate such schools in the public interest.” (emphasis added).

90. *Packer Collegiate* held that any effort by the Department to hold independent schools to educational standards set by the Department and not by the Legislature would be unconstitutional.

91. *Packer Collegiate* held that any attempt to regulate independent schools by the Department would be constitutionally permissible only if the Legislature enacted statutes specifically stating the aspects or activities of the independent schools that the Department could regulate and the standards that the Department would be required to apply.

92. *Packer Collegiate* held that the general power to enforce the educational laws given to the Department did not empower it to regulate independent schools by creating and enforcing educational standards of its own making.

93. The holdings of *Packer Collegiate* have never been amended or overturned.

94. Since *Packer Collegiate*, the Legislature has not passed any new law that empowers the Department to conduct regular reviews of independent schools to ensure they are providing Substantially Equivalent Instruction based on specific standards.

95. Because the New Regulatory Scheme is not based on legislation or statutes empowering the Department to enforce specific educational standards on independent schools but is instead an effort by the Department to confer on itself the power to enforce educational standards of its own design, the New Regulatory Scheme is unconstitutional and unenforceable.

96. In addition, the New Regulatory Scheme is a *de facto* licensing regime that *Packer Collegiate* specifically held was impermissible.

ii. The Department Has Ordered LSAs to Review Independent Schools Even Though They Do Not Have This Power Under the Education Law and Can Only Be Granted This Power by an Act of the Legislature, Not an Administrative Agency Like the Department

97. There is no law or regulation giving LSAs the power to review established, full-

time independent schools in their districts to determine whether they are providing Substantially Equivalent Instruction.

98. In public documents and communications, the Department claims that LSAs have the ability to regulate independent schools in their districts because they are required “to ensure that school age children who reside within the boundaries of their school district are receiving an education.” (Ex. 1 at 1.)

99. The Guidance claims that “[i]t is the responsibility of the local school board (or the Chancellor in the case of nonpublic schools located in New York City) as the ‘school authority’ to determine whether a substantially equivalent education is being provided in religious or independent schools” and cites in relevant part Education Law §§ 3204 and 3210. (*Id.*)

(a) Education Law § 3204

100. Education Law § 3204 does not explicitly or implicitly confer an obligation or power on local school boards, *i.e.*, LSAs, or the Chancellor of the New York City Department of Education (the “Chancellor”), to determine whether independent schools are providing “a substantially equivalent education.”

101. Although a recent amendment to Education Law § 3204, namely Education Law § 3204(2)(ii)-(v), makes the Commissioner responsible for determining whether a narrowly defined subset of independent schools are providing Substantially Equivalent Instruction, none of the Petitioner Schools fall within this narrow subset of schools.

(b) Education Law § 3210

102. Education Law § 3210 does not explicitly or implicitly confer such an obligation or power on LSAs or the Chancellor to determine whether independent schools are providing “a substantially equivalent education.”

103. Education Law § 3210(d) only addresses the ability of a minor to attend shorter school days or a shorter school year if the instruction he or she receives has been approved by the LSA as “substantially equivalent in amount and quality to that required,” and does not give LSAs the power or authority to review all independent schools in their districts to determine whether they are providing Substantially Equivalent Instruction.

104. The Department has not claimed that it has ordered LSAs to conduct reviews of independent schools because they have shorter school days or a shorter school year as per Education Law § 3210(d).

105. None of the Petitioner Schools have students to whom Education Law § 3210(d) would apply.

(c) Education Law § 3205

106. While the Department has cited Education Law § 3205 as requiring LSAs to ensure that students of compulsory school age who reside within their school districts are receiving an education (Ex. 1 at 1), that statute does not give LSAs the power or authority to review all independent schools in their districts to determine whether they are providing Substantially Equivalent Instruction.

107. Even if the Department is correct that an LSA has authority over the children residing in its district, the New Regulatory Scheme does not address what authority an LSA has to ensure the education of children residing *outside* its district just because they attend an independent school in that district, or what authority the LSA has over independent schools in the district that have students who reside in other school districts.

108. All of the Petitioner Schools have students who reside outside the school districts in which they are located.

109. Some Petitioner Schools, such as Buckley and Gow, have only a small minority of students residing in the school district in which they are located.

110. In addition, Gow and PCS have a substantial number of students from other states and even countries. Even if LSAs in New York may rely on their counterparts' determinations of Substantially Equivalent Instruction, for students who reside outside of New York, there is no practical means for LSAs (or their equivalents in students' home states or countries) to evaluate the education those students would receive in their home jurisdictions. Nor would LSAs have any legal authority to investigate the education provided in foreign students' home jurisdictions.

111. Under Education Law § 3205(3), LSAs have the limited power "to require minors from sixteen to seventeen years of age who are not employed to attend upon full time day instruction until the last day of session in the school year in which the student becomes seventeen years of age." Education Law § 3205(2)(c) also authorizes certain named LSAs to require five-year-olds to attend kindergarten, unless they are already enrolled in independent schools or home instruction. Neither of these sections have any relevance to the New Regulatory Scheme.

(d) Other Statutes

112. The provisions of the Education Law which set forth the powers and duties of LSAs do not give LSAs the authority to review independent schools in their districts for Substantially Equivalent Instruction.

113. Education Law § 1709, which sets forth the powers and duties of LSAs in union free school districts, does not confer on those LSAs the power or duty to review established independent schools in their districts to ensure they are providing Substantially Equivalent Instruction.

114. Education Law § 1804, which sets forth the powers and duties of LSAs in central

school districts, does not confer on those LSAs the power or duty to review established independent schools in their districts to ensure they are providing Substantially Equivalent Instruction.

115. Education Law § 2503, which sets forth the powers and duties of LSAs in city school districts, does not confer on those LSAs the power or duty to review established independent schools in their districts to ensure they are providing Substantially Equivalent Instruction.

116. Education Law § 2590-h, which sets forth the powers and duties of the Chancellor, does not confer on the Chancellor the power or duty to review established independent schools in New York City to ensure they are providing Substantially Equivalent Instruction.

117. Prior to the implementation of the New Regulatory Scheme, neither LSAs nor the Chancellor had regularly reviewed established independent schools in their districts to determine whether they were providing Substantially Equivalent Instruction.

(e) Old Guidelines

118. The Department's prior guidance, entitled "Guidelines for Determining Equivalency of Instruction in Nonpublic Schools" (the "Old Guidelines") and still published on the Department website⁴ (attached hereto as Exhibit 4), describes what had been the practice before issuance of the new Guidance and demonstrates that the Department did not believe it had the power it now claims for LSAs under the New Regulatory Scheme.

119. The Old Guidelines do not state or suggest that LSAs or the Chancellor have authority to regularly review independent schools in their districts to determine whether they are providing Substantially Equivalent Instruction. To the contrary, the Old Guidelines explicitly state

⁴ See <http://www.p12.nysed.gov/nonpub/guidelinesequivofinstruction.html>.

that “the board’s [LSA’s] responsibility is to the children living in the district; *it has no direct authority over a nonpublic school.*” (Ex. 4 at 1) (emphasis added).

120. Section III of the Old Guidelines, which describes the duties and responsibilities of LSAs regarding established independent schools in their districts, states that an LSA should only take action when “a serious concern arises about equivalency of instruction” in an established school, and does not in any way suggest that LSAs have the right or duty to conduct regular examinations of all independent schools in their districts. Prior to the implementation of the New Regulatory Scheme, LSAs did not regularly review established independent schools in their districts to determine whether they were providing Substantially Equivalent Instruction.

121. The Old Guidelines and the new Guidance do not constitute binding law, but only reflect the Department’s view of the powers of LSAs.

122. The Department cannot increase or decrease the powers and duties of LSAs or the Chancellor through the issuance of guidelines.

123. Only the New York State Legislature has the power to increase or decrease the powers and duties of LSAs and the Chancellor.

124. Trustees and members of LSAs are elected officials whose powers and duties can only be increased or decreased by the Legislature, as only the Legislature may define the powers and duties of elected officials. N.Y. Const. Art. III, § 1; Art. V, § 3.

125. Trustees and members of LSAs are elected officials whose powers and duties cannot be increased or decreased by an act of the Commissioner of a State administrative agency.

126. Although the Chancellor is appointed by the Mayor of the City of the New York and serves at his pleasure, the Chancellor’s powers and duties are defined by the Legislature.

127. The Chancellor’s powers and duties cannot be increased or decreased by an act of

the Commissioner of a State administrative agency like the Department.

128. The New Regulatory Scheme is illegal and unconstitutional as it confers powers and duties on LSAs and the Chancellor beyond those conferred on them by the Legislature.

iii. The New Regulatory Scheme is Unconstitutionally Vague and Subjective

129. A regulation or statute is unconstitutionally vague if it fails to provide a person of ordinary intelligence with reasonable opportunity to know what conduct is regulated, and fails to provide officials with clear standards for enforcement.

130. The New Regulatory Scheme is unconstitutionally vague because it is not embodied in a single set of regulations, but must be gleaned from a series of changing and sometimes contradictory public communications issued by the Department.

131. In order to understand and follow the New Regulatory Scheme, both LSAs and independent schools would need to consult a series of sources, including the Guidance, training materials, Toolkits, FAQ, pages and announcements on the Department's website, and website links containing the core curriculum requirements for public schools.

132. To the extent either independent schools or LSAs do not or cannot review all available materials and updates and attend the Department's training sessions, they will be relying on an incomplete or inaccurate version of the New Regulatory Scheme.

133. The New Regulatory Scheme is also unconstitutionally vague for failure to provide clear standards for enforcement.

134. The most the Guidance provides for LSA-led reviews is a statement of five "core principles," namely that the review should be "objective, mindful, sensitive, respectful, and consistent." (Ex. 1 at 4.)

135. The Guidance instead directs LSAs to a separate Toolkit (Ex. 2) that "includes a

rubric with criteria aligned with current law and regulation” and “establishes the expectations for both LSA and religious and independent school leaders” for the review process. (Ex. 1 at 4.)

136. Two “Toolkits” are provided: one for LSAs and one for independent schools.

137. Neither Toolkit explains how LSAs can or should determine the content of public education, which is the necessary point of reference to determine whether an independent school is providing Substantially Equivalent Instruction.

138. The LSA Toolkit consists primarily of “tables [with] information about items that will be reviewed by the LSA for substantial equivalency.” (Ex. 2 at 4.)

139. These tables of information are characterized as “possible evidence” but provide no guidance on how the absence of “possible evidence” should be viewed, whether other evidence might suffice, or how the LSAs should weigh or consider “possible evidence” in making a determination of Substantially Equivalent Instruction.

140. For example, the Toolkit lists a “requirement” that “Instruction is provided in required subjects, consistent with the NYS learning standards, as defined by Part 100 of the Commissioner’s Regulations.” (Ex. 2 at 5.)

141. The “law/regulation” cited in support of this “requirement” includes regulations that specifically apply only to public schools, and not to “all schools” or specifically to independent schools. (*Id.*) For example, 8 NYCRR § 100.2(c)(2) requires instruction “for all public school students ... that supports development of a school environment free of harassment, bullying, and/or discrimination.”

142. The Toolkit lists six items of “possible evidence” the LSA could consider in determining whether a school provides the required instruction, such as a “framework for teaching and learning in the core academic areas of English language arts, math, science, and social studies,”

as well as unspecified “other” evidence (*id.*), but does not describe what particular features must be present in this “possible evidence” to determine whether a school is compliant.

143. The Toolkit consists of multiple lists of information and concepts with yes/no boxes following each item.

144. The Toolkit provides no instruction or direction on how LSAs should use these yes/no boxes when determining whether the independent school under review provides Substantially Equivalent Instruction.

145. The Toolkit does not state whether all boxes on the Toolkit must be marked “yes” in order for an independent school to be found compliant by the LSA, or what number of “no” responses on any given section would be sufficient to deem a school not in compliance.

146. Many sections of the Toolkit provide lists of materials the LSA should examine during its review, but do not state what the LSA should be looking for in those materials.

147. The Toolkit’s section on the “Process for Determining Academic Progress” (Ex. 2 at 9) is one example:

Questions	Documentation of Process	Process for Determining Progress Notes
<p>Are students making academic progress as they move from grade to grade?</p> <p>Does the school have a process for determining academic progress?</p>	<ul style="list-style-type: none"> • List of standardized tests administered in each grade • Data on standardized test scores • Other assessments used for progress monitoring • Representative samples of student report cards • Goals for student achievement and educational program • Process for administering assessments and analyzing data • Graduation rates, if applicable • Plan for improving academic outcomes • Other: 	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p>

148. Although this Toolkit section lists different pieces of information the LSA should review, it provides no guidance as to how this information is to be weighed, what minimum standards are needed to confirm that students are making academic progress as they move from grade to grade, or what individual factors should guide the LSA's determination, but only provides a single yes/no box to confirm that there is a Process for Determining Progress.

149. This Toolkit section also fails to state what specific academic assessments and educational outcomes in the local public school district are to be used as reference points for the independent school.

150. Appendix A to the Toolkit, entitled Program Requirements, contains a checklist of basic subjects that should be taught to various grades. However, just under the title of this Appendix appears the following: "Learning standards for all grade levels may be referenced at: <http://www.nysed.gov/curriculum-instruction>." (Ex. 2 at 11.)

151. This link is to a section of the Department's official website that provides many hundreds of pages of documents detailing specific "core curriculum" and instruction requirements

for each subject taught for each grade level in the public schools.

152. For example, following the link for “Science” leads to a page entitled “Science Learning Standards,” which leads to another link for “Chemistry,” which links to a 59-page document entitled “Core Curriculum” listing the specific topics that must be taught, learning standards that must be met, and methods that must be employed when teaching chemistry in public schools.

153. The Toolkit does not explain how these highly detailed core curriculum standards are to be used in evaluating whether independent schools are providing Substantially Equivalent Instruction, leaving each LSA to decide whether, and to what extent, the Department’s learning standards should be applied in its review of any particular independent school.

154. Upon information and belief, the Department is expecting and instructing LSAs to ensure that independent schools meet the learning standards, including the “Core Curriculum” standards, referenced in the link in Appendix A of the Toolkit, in order to be deemed to be providing Substantially Equivalent Instruction.

155. To the extent that the Toolkit’s inclusion of this link to core curriculum standards is interpreted as requiring independent schools to follow them, the Petitioner Schools (and most independent schools) will have to make significant, if not wholesale, changes to their curricula and teaching methods to do so.

156. To the extent that the Toolkit’s inclusion of this link to core curriculum standards is interpreted as requiring independent schools to follow them, this would constitute an attempt by the Department to dictate the curricula and teaching methods of independent schools that would be unconstitutional under both New York and federal law.

157. The Toolkit also directs LSAs to determine whether independent schools provide

instruction “by a competent teacher.” (Ex. 2 at 6.)

158. A list of Frequently Asked Questions dated January 9, 2019 (the “FAQ”) on the Department’s website recites the evidence an LSA may consider when evaluating the competence of independent school teachers as it appears in the Toolkit, but does not describe what standards – such as regular training and professional development, or a history of satisfactory performance – that evidence should meet. (Ex. 3 at 4; Ex. 2 at 6.)

159. None of the documents or communications issued by the Department with regard to the New Regulatory Scheme provide specific instruction as to how to evaluate the information obtained from independent schools as part of the LSA’s review, what evidence will be sufficient to determine that a school is compliant in any particular area, or how the assessment of all of these individual areas should be evaluated in determining whether the school provides Substantially Equivalent Instruction.

160. Without specific metrics and standards, the LSAs will each apply their own criteria and understanding of what constitutes Substantially Equivalent Instruction, resulting in an inconsistent, highly subjective determination based on which LSA is conducting the review.

161. The Department has changed and supplemented the documents comprising the New Regulatory Scheme since it first issued them.

162. Upon information and belief, the Department will continue to change and supplement the New Regulatory Scheme as it provides training to LSAs.

163. The press release announcing the Guidance (attached hereto as Exhibit 5) noted that the Department would “hold trainings for both public and nonpublic school leaders on the guidance in December and continuing next year.” (Ex. 5 at 1.)

164. In December 2018, the Department held its first training session about the New

Regulatory Scheme.

165. This training session did not provide clear and concrete standards by which the LSAs could determine if the schools they were reviewing were providing Substantially Equivalent Instruction.

166. On February 14, 2019, the Department held another training session attended by LSAs and independent school administrators.

167. At the training session, the Department suggested that, to the extent the school under review is a NYSAIS member, the LSA should review the NYSAIS accreditation report, since NYSAIS accreditation is “intensive” and would contain most of the information the reviewing LSA would need to see.

168. The Department did not tell the attendees that the NYSAIS accreditation report is confidential and that the LSAs would have no right or ability to demand the report.

169. At the same training session, the Department said that there was no rule or recommendation for the number and type of personnel for the LSA that should review an independent school and would depend on the circumstances of that school, but should include someone with “appropriate background in curriculum.”

170. At the same training session, the Department also represented that the Commissioner would make the final determination of substantial equivalence for *all* independent schools. This statement was directly contrary to the process described in the Guidance (Ex. 1) and the text of Education Law § 3204(2)(v).

171. At a March 4, 2019 meeting between the Commissioner and the heads of NYSAIS and four of the Petitioner Schools, the Commissioner said that an LSA reviewing a NYSAIS member school should first request its NYSAIS accreditation report, but did not specify how that

report was to be used in conjunction with the Guidelines or what weight the LSA should give it in reaching its determination of Substantially Equivalent Instruction.

172. At that same meeting, in response to such basic questions as whether independent schools would have to adhere to the Department's "core curriculum" standards, the Commissioner directed the attendees to submit their questions in writing so the Department could post its answers on the FAQ section of its website, implicitly acknowledging that the Guidelines are still unclear and subject to interpretation.

173. Although the New Regulatory Scheme requires LSAs to conduct extensive reviews of independent schools every five years (Ex. 1 at 3), Respondents have represented that "no additional funding will be provided" for such work. (Ex. 3 at 2).

174. Without necessary funding, LSAs will lack the resources needed to complete full, fair, or otherwise adequate reviews to determine independent schools' substantial equivalence.

175. The fact the LSAs lack funding, training or experience needed to conduct these reviews mandated by the New Regulatory Scheme will increase the probability that the LSA reviews will not be thorough and that determinations made by LSAs will be based on their subjective understanding of the Guidelines and Toolkit, and will result in inconsistent, arbitrary, and inequitable determinations.

iv. The New Regulatory Scheme Violates the State Administrative Procedures Act

176. The New Regulatory Scheme constitutes "rules" within the meaning of SAPA, yet has been implemented without satisfying the formal rule-making process required by SAPA.

177. The plan for LSA review and evaluation of independent schools has not been set forth in any of the Department's rules under Title 8 of the New York Codes, Rules and Regulations.

178. Upon information and belief, Respondents announced and have implemented the

New Regulatory Scheme through multiple public documents and communications, and not through the issuance of new rules, in order to circumvent the requirements of SAPA.

179. SAPA defines a “rule” as, in relevant part, “the whole or part of each agency statement, regulation or code of general applicability that implements or applies law ...” § 102(2)(a)(i).

180. The New Regulatory Scheme constitutes “rules” as defined under SAPA and caselaw.

181. Although the Department has called the Guidance, Toolkit, and FAQ informal “guidelines,” they are rules that should have been subject to the public notice and comment periods required by the rule-making provisions of SAPA.

182. The New York City Department of Education (“DOE”) understood the New Regulatory Scheme to constitute “regulations” when it posted two job openings (attached hereto as Exhibits 6 and 7) on its website in February 2019 for the positions of Executive Director for Substantial Equivalency (the “Executive Director”) and Senior Director of Operations for Substantial Equivalency (the “Senior Director”).

183. The posting described the Executive Director as “responsible for ensuring that the instruction provided to approximately 250,000 students in approximately 800 nonpublic schools is substantially equivalent to that in public schools. In alignment with New York State Education Department (NYSED) *regulations*, the Executive Director will be responsible for developing a training and oversight model that enables DOE to observe instructional practices, identify discrepancies, and report data to NYSED.” (Ex. 6 at 1) (emphasis added).

184. Similarly, the Senior Director is responsible for ensuring that independent schools in New York City “meet City and State *regulatory standards*” and “advis[ing] the Senior

Executive Director of the Office of Nonpublic Schools on NYSED reporting related to *substantial equivalency requirements*” (Ex. 7 at 1) (emphasis added).

185. The Executive Director and Senior Director positions make clear that DOE understands the New Regulatory Scheme to be mandatory, and that it must police independent schools’ curricula.

186. DOE has already hired the Executive Director, who recently contacted one of the Petitioner Schools to discuss its review.

187. SAPA § 202 sets forth the “rule making procedure” that governs state agencies: “*Prior* to the adoption of a rule, an agency *shall* submit a notice of proposed rule-making to the secretary of state for publication in the state register and *shall* afford the public an opportunity to submit comments on the proposed rule.” § 202(1)(a) (emphasis added).

188. The notice of proposed rule-making must be published at least sixty days prior to either its addition, amendment or repeal (if no public hearing is required), or the first public hearing about the proposed rule. *Id.* The comment period lasts through the notice period (where no public hearing is required), or at least five days after the last public hearing. *Id.*

189. SAPA § 202(1)(f)(i) requires that the notice of proposed rule-making “cite the statutory authority, including particular sections and subdivisions, under which the rule is proposed for adoption.”

190. SAPA § 202-a provides:

[i]n developing a rule, an agency shall, to the extent consistent with the objectives of applicable statutes, consider utilizing approaches which are designed to avoid undue deleterious economic effects or overly burdensome impacts of the rule upon persons, including persons residing in New York state’s rural areas, directly or indirectly affected by it or upon the economy or administration of state or local governmental agencies.

191. SAPA § 202-a(2) further requires that each agency issue a regulatory impact

statement for a rule proposed for adoption.

192. A regulatory impact statement must include, among other things, statutory authority, needs and benefits, costs, and local government mandates. § 202-a(3).

193. There may be public hearings to discuss a proposed rule-making. *See* § 202(f)(ii).

194. After the notice and comment periods, the proposed rule may be formally adopted by filing a notice of adoption. *Id.* § 202(5).

195. The notice of adoption must include, among other things, citation to statutory authority, a revised regulatory impact statement, and a detailed assessment of public comment. *Id.* §202(5)(c).

196. In connection with the New Regulatory Scheme, the Department never submitted a proposed notice of rule-making, never conducted a regulatory impact assessment, never provided the public an opportunity to comment, and never filed a notice of adoption.

197. As the New Regulatory Scheme is in reality a set of rules promulgated by the Department and implemented without satisfying the rule-making requirements of SAPA, the New Regulatory Scheme is illegal and must be declared invalid and unenforceable.

C. Procedural History

198. On March 4, 2019, representatives of NYSAIS and the Petitioner Schools met with the Commissioner to address their concern with the New Regulatory Scheme.

199. The Department refused to amend or withdraw all or any portion of the New Regulatory Scheme, even though Petitioners made clear that such a response would result in the filing of this action.

FIRST CAUSE OF ACTION:
JUDGMENT PURSUANT TO CPLR 7806 AND/OR CPLR 3001

200. Petitioners repeat and reallege the allegations contained in paragraphs 1 through

199 as if set forth at length herein.

201. Because the New Regulatory Scheme is based on an unconstitutional and illegal usurpation of authority by Respondents, it (i) constitutes an excess of jurisdiction by Respondents, (ii) was made in violation of lawful procedure, (iii) was affected by an error of law, and/or (iv) was arbitrary and capricious or an abuse of discretion, and thus should be declared void, annulled, reversed, vacated, and otherwise set aside.

202. Because the New Regulatory Scheme is based on an unconstitutional and illegal delegation of authority to LSAs, it (i) constitutes an excess of jurisdiction by Respondents, (ii) was made in violation of lawful procedure, (iii) was affected by an error of law, and/or (iv) was arbitrary and capricious or an abuse of discretion, and thus should be declared void, annulled, reversed, vacated, and otherwise set aside.

203. Because the standards to be enforced by the LSAs under the New Regulatory Scheme are subject to ongoing revision, vague, non-specific, and highly subject to inconsistent and subjective application by the LSAs, the New Regulatory Scheme (i) constitutes an excess of jurisdiction by Respondents, (ii) was made in violation of lawful procedure, (iii) was affected by an error of law, and/or (iv) was arbitrary and capricious or an abuse of discretion, and thus should be declared void, annulled, reversed, vacated, and otherwise set aside.

204. Because the New Regulatory Scheme is a set of “rules” as defined under SAPA that have been implemented without following the rule-making procedure thereunder, it (i) constitutes an excess of jurisdiction by Respondents, (ii) was made in violation of lawful procedure, (iii) was affected by an error of law, and/or (iv) was arbitrary and capricious or an abuse of discretion, and thus should be declared void, annulled, reversed, vacated, and otherwise set aside.

SECOND CAUSE OF ACTION:
STAY PURSUANT TO CPLR 7805

205. Petitioners repeat and reallege the allegations contained in paragraphs 1 through 204 as if set forth at length herein.

206. Petitioners are likely to succeed on the merits of its constitutional and other claims herein.

207. Petitioners will suffer irreparable injury if the Court does not stay enforcement of the New Regulatory Scheme.

208. The violation of Petitioners' constitutional rights through, among other things, the imposition of the New Regulatory Scheme and interference in the educational missions and methods of independent schools, would cause irreparable injury.

209. To the extent any of the Petitioner Schools are found not to be providing Substantially Equivalent Instruction, that conclusion would irreparably damage the school's reputation and business.

210. Respondents cannot show any immediate harm that would result from a stay of the New Regulatory Scheme.

211. The balance of the equities favors Petitioners because they have a strong and constitutionally-protected interest in designing their unique curricula and methods to best serve students, and Respondent have no interest in imposing a vague, ever-evolving regulatory scheme based on an unconstitutional delegation of authority and implemented in violation of SAPA's rule-making requirements.

212. Accordingly, the Court should stay enforcement of the New Regulatory Scheme.


PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court:

- A. On the First Cause of Action, enter judgment declaring the New Regulatory Scheme annulled, reversed, vacated, voided, and set aside;
- B. On the Second Cause of Action, grant a stay of the enforcement of the New Regulatory Scheme;
- C. Award Petitioners their costs, fees, and expenses, including reasonable attorneys' fees, incurred in connection with this proceeding; and
- D. Grant Petitioners such other and further relief as this Court deems appropriate.

Dated: New York, New York
March 5, 2019

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