



New York State Joint Budget Hearings - Elementary Education

February 11, 2020

Testimony of Rabbi Yeruchim Silber

Director of New York Government Relations

Agudath Israel of America

Good afternoon, Chairs Weinstein, Krueger, Benedetto, Mayer and members of the committees. Thank you for this opportunity to testify at this joint committee hearing.

My name is Yeruchim Silber and I am the Director of New York Government Relations of Agudath Israel of America. Agudath Israel of America is a national nonprofit dedicated to representing, unifying, and serving Orthodox Jewry in America. Nearly 100 years old and headquartered in lower Manhattan, Agudath Israel maintains offices in Washington D.C. and across eight regions so as to broadly serve its constituents nationwide. In addition to its advocacy work, Agudath Israel facilitates pro bono legal services, provides education and special education support, constituent services, health care advocacy, workforce development, adult literacy training, social services, free, hot meals for the elderly at its senior centers, affordable housing, afterschool and summer camp programming, and more.

Before I begin, I would like to thank my colleague Avrohom Weinstock, Chief of Staff and Associate Director of Education at Agudath Israel, for his assistance in preparing this document.

For nearly 60 years, Agudath Israel has been at the forefront of advocating and serving the nonpublic school community in general, and Orthodox Jewish yeshivas and day schools in particular. Our Education Affairs department provides free, personal guidance to help schools comply with pertinent laws, health and safety guidance, and advise them of available opportunities. Hundreds of schools have signed up to receive our Education Affairs email updates, with nearly 1400 administrators receiving about one update every other school day. Workshops and webinars occur throughout the year. The Yeshiva Summit, an annual, all-day learning “boot-camp,” is attended by hundreds of school administrators, and covers a myriad of compliance topics. It is graced by New York City and New York State elected officials and State Education Department and other governmental personnel.

By bridging the gap between often resource-strapped nonpublic schools and governmental and regulatory agencies, Education Affairs of Agudath Israel helps ensure cooperation, collaboration, and the mutual flow of critical information between schools, school leaders, and government.

Nonpublic Schools and Yeshivas

There are approximately 400,000 K-12 nonpublic school students in New York State, accounting for 13% of the state’s 3,000,000 K-12 students. Over 150,000 of the 400,000 K-12 nonpublic schools students attend Jewish day schools and yeshivas (and growing), many within the ambit of Agudath Israel.

To understand the budgetary impact these schools have on the state – if nonpublic school students attended local public schools, the total taxpayer cost, conservatively, would be **nearly \$9 billion annually**. Jewish students alone save taxpayers about \$3.5 billion annually. These figures simply utilize the annual tuition costs to the state. After adding capital costs, the savings would be billions more.

But aside for the significant financial savings to the state, nonpublic schools and yeshivas fulfill a unique need. The free New York State public school system provides an excellent option for the majority of parents in the state, and Agudath Israel is supportive of that. But some parents feel their children need something different, and reach deep into their pockets to provide that for their children. In

the case of yeshiva parents, parents seek an education that combines a secular education with one that imbues their children with Jewish traditions, teachings, and values, something even more critical to pass on in the wake of the Holocaust. This dual-curriculum education imparted is unique, costly, and the days are long and rigorous for students. Yeshivas may vary significantly in their emphases, control, and style. But what they all have in common is that yeshiva parents and children would not trade them for the world, and they have produced generations of successful Jews, who are upright citizens and proud of their heritage.

Guidelines and Regulations: Attempts at Rigid Control and Uniformity

It is perhaps for these reasons that the nonpublic school community was shocked when former SED Commissioner Elia released rigid, one-size-fits-all Guidelines in November 2018 to govern nonpublic schools. The rigidity of the Guidelines threatened to erode the diversity of nonpublic schools and the ability of parents to choose how they educate their children.

To be clear, the Guidelines contained pages of bureaucratic checkboxes detailing courses far beyond reading, writing, and arithmetic. Theater, visual arts, family science, consumer science, and classes on the worthy uses of leisure time had their checkboxes. Many items had precise listings of times mandated to be taught for, in the name of making nonpublic schools “equivalent” to public schools. The Guidelines further spelled out that failure to comply with these checklists could lead to harsh penalties, including forced school closure and truancy charges against parents.

The specter of unprecedented government overreach loomed.

The response was predictable. A majority of the New York City Council stated in a formal letter that, “The State Education Department is forcing its way deep into private school practices with unprecedented incursion...” The state’s over 500 Catholic schools declared they would refuse government entry into their facilities if the state would seek to enforce the draconian controls. NYSAIS (New York State Association of Independent Schools) schools balked. Yeshiva leaders sought clarification.

After the then Commissioner failed to clarify these Guidelines or engage in dialogue with nonpublic school representatives, in March 2019, Agudath Israel, Torah Umesorah (The National Society for Hebrew Day Schools), and PEARLS (Parents for Educational and Religious Liberty in Schools) joined individual schools to file suit in State Supreme Court challenging the Guidelines. The Council of Catholic Schools Superintendents and NYSAIS filed similar lawsuits.

In short order, on April 17, 2019 Judge Christina Ryba of the State Supreme Court in Albany declared the Guidelines “null and void,” without even needing to address the potential Constitutional violations it may have incurred, due to its violation of the State Administrative Procedures Act (SAPA). The court ruled that these “Guidelines” were not clarifications of existing law, but were in fact full-throated, novel regulations, which, per SAPA, require a formal public comment period and approval by the Board of Regents.

SED was undeterred. Over July 4th weekend, SED proposed new regulations, virtually identical to the offensive November 2018 Guidelines, but with the required 60 day comment period.

The Comment Period

Summertime notwithstanding, letters poured in to SED by the thousands, nearly all in opposition to the regulations. The volume of comments shattered NY records of public comments submitted, *on any proposed regulation*. **Over 140,000 comments**, an estimated 98% of them critical. The reasons for disapproval were varied: that nonpublic schools have a long history of producing successful graduates; that the regulations infringe on religious rights; that government is usurping parental choice; that the regulation framework is educationally flawed; that government should first focus on public schools; that the mandated level of state micromanagement of private schools is unlawful, and more. See SED letter evaluating the letters received, and suggested next steps, attached.

It is no secret that NY places tremendous value on education, spending more per student than any other state in the nation, and twice the national average. Again, Agudath Israel is supportive of strong public schools. At the same time, while most states, as this point, provide some form of tuition relief to the parents who pay

taxes and yet do not send their children to public school, NY does not. Some wondered aloud how the state that spends the most per public school student, and affords relatively little per nonpublic school student, was now proposing rigid control of the private school curriculum in an unprecedented manner, and beyond the bounds of what has been done in any other state.

In addition to individual comments, organizations like Agudath Israel of America, Coalition for Jewish Values, Council for American Private Education, Council of School Superintendents, Jewish Community Relations Council of New York, [New Civil Liberties Alliance](#), New Yorkers for Constitutional Freedom, New York State School Boards Association, Orthodox Union and others opposed the regulations. 60 yeshiva trained, Harvard Law School alumni banded together to [formally oppose](#) regulations, [hundreds of educators](#) and mental health professionals banded together to do the same. Critical letters were also sent by several elected officials, including a majority of the New York City Council, and a group of state Senators.

At this time, SED is still reviewing the mountain of letters received and determining next steps.

The New York City Letter

At the NYC level, in a [letter](#) dated December 17th 2019, NYC Schools Chancellor Richard Carranza summarized the DOE's findings to Acting SED Commissioner Shannon Tahoe. The findings were regarding 39 schools that a group alleged were not providing an education equivalent to public school.

Of the 39 schools, 11 were deemed out of the scope of inquiry. Some were preschool centers or post high school centers; another was a registered high school and automatically passed the inquiry; and one was actually a butcher shop.

Of the remaining 28 schools, the DOE report found that *23 of the 28* schools were substantially equivalent, well developed, or on the way to developing substantial equivalency. Thus, 5 schools were deemed "underdeveloped" out of the 39 schools cherry-picked by the complainants to make their case in the complaint letter alleged. Let's repeat. That is 5 out of 275 yeshivas in the city; of 400 in the state; and of 1800 nonpublic schools.

The Chancellor reported that, at the majority of the schools visited, school leaders expressed a commitment to expanding and improving students' secular instruction, curricular improvements already were made at many schools, and the DOE "recognized and applauded" the significant progress made as a result of the proactive steps taken.

The Chancellor also praised the organization PEARLS for their development of secular curriculum materials it has produced for yeshivas in mathematics, English Language Arts, and STEM and "intends to strongly encourage PEARLS to continue its efforts and to encourage these schools to take advantage of PEARLS's materials."

See more about the letter in an Op-ed penned by Assemblymember Simcha Eichenstein [here](#). Others [similarly covered](#) the letter. Moreover, the original complaint letter and a subsequent "report" released in 2017 were based primarily on hearsay and testimony of Facebook friends. In a sworn affidavit submitted to State Supreme Court, Professor Awi Federgruen, the Charles E. Exley Professor And Chair of the Decision Risk and Operation Division of the Graduate School of Business at Columbia University, explains in detail how the report "suffers from several methodological infirmities" and "fails to substantiate the claim that yeshivas do not comply" with educational standards. See attached for full affidavit.

What's Next

If the state continues to insist on regulating nonpublic schools, we might suggest the following constructive baseline principles be used to inform a way forward:

- 1. Complaint based** – Chancellor Carranza's letter found, following a thorough investigation, literally a handful of nonpublic schools out of hundreds, in need of substantial improvement. To propose an overhaul of 1800 private schools for a small number of schools the city found in need of improvement is unnecessary, harmful, and a waste of state resources. Therefore, any further action should remain complaint based, as the law has already codified.

2. Standing – a bedrock principle of American jurisprudence is that complainants must have legal standing to bring a case. Complaints about a nonpublic school should only be admitted if emanating from parents or students currently enrolled therein, or perhaps extended for a brief window following graduation. To allow otherwise would open the door to individuals with agendas or without actual knowledge of what occurs in said school. YAFFED’s (the group that filed the original complaint) founder and executive director, for example, has left Hasidic Orthodox Judaism and likened his experiences when Hasidic to a “[a cancer](#),” has publicly ridiculed Orthodox practices as “[crooked](#)” and “absurd,” and has tweeted that Orthodox Judaism is a “crazy religion” and a “[cult](#)” (he has since deleted some of these tweets when they surfaced). Certainly, everyone is entitled to their viewpoints and life decisions. But we must be aware of publicly proclaimed bias, and exercise circumspection when allowing such individuals to launch complaints that impact the lives of thousands of children.

Moreover, according to the [August 2018 letter](#) issued by the DOE, upon interviewing the complainants, there was firsthand information on only 11 of the 39 schools complained about.

3. Collaboration – we have witnessed what occurs when educational decrees are made in solitude and without collaboration and input from those impacted. Educators and school and community leaders need to be an integral part of the process. If a school is complained about, the right standards will then be used to improve education instead of arbitrary or bureaucratic checkboxes.

4. Flexibility – the state has recognized that there is [more than one pathway](#) toward graduation. While I would subscribe that educational institutions, even private ones, must provide certain core, basic skills to their graduates to ensure they can be successful, mandating items beyond that carries moral and Constitutional quagmires. Trigonometry might be enriching; should it be mandatory? Consumer science? Family science? Is seat time the only way to prove “equivalency?”

As reported in my testimony last year, pursuant to a FOIL request, the results of the standardized year-end Regents exam was obtained for every school in the state, in every subject. If one were to take the top 25 performing schools

or districts in all 14 Regents subjects reported, **207 of the top 350** spots are filled by Jewish schools, which obviously comprise only a small proportion of the students statewide. Few, if any, of these top performing schools supply the seat time required in the Regulations, and yet these students obtained exemplary scores nonetheless. Clearly, there is more to education than seat time. As one Assemblywoman remarked to me, “Perhaps there is something in the yeshiva curriculum that public schools should be observing and modeling so that we can duplicate some of these outstanding results!”

To comply with federal ESSA accountability requirements, the state looks at public school student growth, attendance, school safety incidents, teacher turnover, graduation rates, and other indicators. ESL children are obviously evaluated differently than students for whom English is the first language. These data points illustrate why flexibility and collaboration are important, and why a one-size-fits-all checkbox and seat-time approach of a laundry list of courses does not work.

- 5. Respect for parental autonomy** – whatever approach is agreed to in the sensitive area of demonstrating equivalency if a complaint is issued against a school must integrate a healthy respect for parental autonomy and religious rights. These are *private* schools. Case law has typically favored the doubly protected area of parental autonomy (As the Supreme Court put it: “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of Sisters*, 268 U.S. 510) and religious free exercise, over the state’s right to dictate what occurs in a private school. This is not to say that the state does not have an interest in ensuring that its citizens are educated, but that those contours must be exercised with due care.
- 6. Holistic** – Chancellor Carranza’s letter concludes: “As mentioned, we would seek to revisit the schools with an interpreter or with an educator who understands the relevant languages in order to assess instruction in classes not taught in English.”

Earlier, the report acknowledges, “a strong argument has been made that Judaic Studies can be a powerful context in which to cultivate critical thinking and textual analysis skills. While critical thinking and textual analysis skills may be taught in the context of Judaic Studies, the DOE team was unable, in the visits described below, to evaluate for individual schools the degree to which secular topics and/or critical thinking skills were covered through this religious study primarily because those classes were not taught in English.”

Yeshiva learning is linguistically unique. It may consist of Yiddish (which itself is a blend of several languages), English, Hebrew (Biblical, medieval, and modern) and Aramaic - sometimes all in the same sentence! DOE educators plainly admitted to being unable to comprehend the secular studies and Judaic studies classes as a result. No fair evaluation of a school curriculum can be made if the evaluators only understand a fraction of what is occurring in the classroom and throughout the school day. Plainly, if a complaint is made, knowledgeable and culturally and linguistically competent professionals must be brought in to ensure a fair evaluation.

7. Trust-building – unfortunately, some have politicized this issue. The focus of any such exercise, if deemed necessary, must be to improve education. Not a “gotcha.” The real work occurs collaboratively and in the trenches, not in the media spotlight.

These are just guiding principles. My colleagues and I stand ready to work with both SED and members of the legislature toward a constructive way forward. I invite members of the committee to come visit our schools. See for yourselves how our schools foster an environment of intense learning and prepare them for a lifetime of achievement. We would be happy to coordinate a visit.

This year’s budget calls for \$28.6 billion in education funding. Nonpublic schools receive about \$300 million in funding (the vast majority of which are just reimbursements for state mandates the school is performing on the state’s behalf), [as described here](#). Even including such funds, that amounts to just over 1% of education funding, while nonpublic school students comprise approximately 13% of the total school population.

Thus, here are three critical requests:

**Anti-Semitism is Rising to Near Unprecedented Levels:
Increase Security Funding for Nonpublic School Children**

Five people stabbed by a machete-wielding attacker at a Hanukkah celebration in Monsey. Four shot at a kosher grocery store in Jersey City, after the shooters failed to access the 50 children in the yeshiva next door. Massacres at synagogues in Pittsburgh and Poway. These were not just one-off tragedies. According to both FBI and ADL statistics, anti-Semitic attacks have seen double digit increases in recent years. **The shocking is becoming routine; anti-Semitic incidences are approaching near historic levels in the United States.**

We do not accept this as the new normal. Neither should any decent democracy. Our constituents are visibly Jewish. They should not be scared to walk the streets, pray in their synagogues, and send their children to school.

Last year, Governor Cuomo proposed, and the legislature approved, \$45 million for competitive grants under the Securing Communities against Hate Crimes program. In his executive budget Governor Cuomo has proposed another round of these grants for the upcoming year. **Agudath Israel supports that proposal and calls for its enactment.**

But at least as important: the Nonpublic School Safety Equipment (NPSE) Grant is a streamlined grant for nonpublic school safety and security equipment. It is the only source of state funding that is noncompetitive, customizable in its use, and available to nearly all nonpublic K-12 children, regardless of school size. In recent years, \$15 million was allocated for the NPSE, or approximately **\$37 per child**. New Jersey, by contrast, last year approved an allocation of **\$150 per child** for a similar grant, doubling its previous rate.

We call upon the legislature to increase security funding under the NPSE Grant for nonpublic school children to \$30 million. Our children need to be and feel safe in these dangerous times, and this is the grant that can most directly provide it.

Correct the Immunization Recordkeeping Reimbursement Shortfall

In 2016, at the request of Agudath Israel, the legislature corrected a longstanding shortfall to nonpublic schools. By law, nonpublic schools must be reimbursed for the fair cost of services they perform on behalf of, or at the behest of, the government. CAP and Mandated Services fall under this rubric.

Yet for over 30 years, **nonpublic schools** in NYC, Buffalo, and Rochester had been collecting, collating, and reporting extensive student immunization data to the state and **were being reimbursed pennies on the dollar**, receiving just **60 cents** per child *annually* for their work. Meanwhile, surveys and financial modeling demonstrated that the actual expenses incurred was closer to **\$30 per child!** Recognizing this disparity, the 2017 and 2018 enacted budgets compromising to allocate \$7 million for immunization reimbursement.

Inexplicably, last year, **in the middle of the worst measles outbreak that New York and this country have suffered in decades**, funding for immunization recordkeeping was cut.

Agudath Israel requests an allocation of \$9 million in the 2020-21 state budget to reimburse for actual costs incurred.

Allow Parents to Save Their Own Money for K-12 Education

In December 2017, the federal government allowed 529 tax-advantaged saving accounts to be used for K-12 education. Seeking to aid parents, one by one, states have followed. The majority of states now allow 529 accounts to be used for K-12 education.

New York, however, does not.

In fact, a parent who uses her 529 account to pay a K-12 educational expense per the federal tax law could face a tax “**recapture penalty**” under New York tax law for a deduction taken a decade ago. New York must not prevent parents from effectively saving their own money to pay for their children’s education.


While **Agudath Israel** supports various proposals made to help parents shoulder nonpublic school expenses, it **specifically calls on the legislature to include private and public school K-12 educational expenses in its 529 program.**

Thank you again for this opportunity to testify. It is our hope that together we can achieve positive results for all schoolchildren across the state.




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: John D'Agati 

SUBJECT: Substantial Equivalency of Instruction for Nonpublic Schools

DATE: January 30, 2020

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

Staff will update the Board of Regents on the comments received on the proposed addition of Part 130 of the Regulations of the Commissioner of Education Relating to Substantially Equivalent Instruction for Nonpublic School Students and will provide an overview of next steps.

Reason(s) for Consideration

For information purposes.

Proposed Handling

The item be presented to the P-12 Education Committee for discussion at the February 2020 meeting.

Procedural History

The proposed amendments related to substantial equivalency of instruction for nonpublic schools were published in the State Register on July 3, 2019. Following the 60-day public comment period, the Department received over 140,000 comments on the proposed amendment.

Background Information

In 2015, the Department was made aware of concerns from the field that there was a need to provide updates to our long standing guidance regarding the statutory requirement set forth in Education Law §3204[2] which requires that "[i]nstruction given

to a minor elsewhere than at a public school shall be at least ***substantially equivalent*** to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides” [emphasis added]. In working to address those concerns and update this guidance, the Department received feedback from various stakeholder groups in the public school and nonpublic school community and incorporated many of their suggestions into the revised guidance. On November 20, 2018, the Department released the updated guidance on substantial equivalency, including toolkits for public and nonpublic schools. From December 2018 through March 2019, an update to the toolkit was made to reflect additional feedback from the field and the Department conducted trainings across the state for public and nonpublic school leaders regarding the updated guidance.

In March 2019, the guidance was challenged in an Article 78 proceeding in the Albany County Supreme Court and in April 2019, the Court struck down the updated guidance holding that the issuance of the guidance violated the State Administrative Procedure Act (SAPA). In June 2019, the Department presented proposed regulations relating to the substantial equivalency requirement to the Board of Regents which were published in the State Register on July 3, 2019 and were presented to the field for public comment.

From July 3, 2019 to September 3, 2019 the Department received over 140,000 comments on the proposed regulations. Department staff have been working to review and assess these extensive comments in the months since. A summary of the comments and an overview of the common themes, concerns, and suggestions raised will be provided for review and discussion.

Related Regents Items

December 2015: Overview of Nonpublic Schools in NYS

(<http://www.regents.nysed.gov/common/regents/files/Nonpublic%20Schools%20in%20NYS%20-%20An%20Overview.pdf>)

April 2018: Review of the 2018-19 Enacted Budget

<https://www.regents.nysed.gov/common/regents/files/Review%20of%20the%202018-19%20Enacted%20Budget.pdf>

State Aid Subcommittee Presentation

<http://www.regents.nysed.gov/common/regents/files/SA%20-%20Overview%20of%20the%202018-19%20Enacted%20Budget.pdf>

July 2018: Preliminary Overview of the 2018 Legislative Session

(<https://www.regents.nysed.gov/common/regents/files/Preliminary%20Overview%20of%20the%202018%20Legislative%20Session%20Memo.pdf>)

June 2019: Proposed Substantial Equivalence Regulation

(<http://www.regents.nysed.gov/common/regents/files/619p12d2.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

Based on the unprecedented amounts of comments received, Department staff recommends going back out for stakeholder feedback on the proposed amendments.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

YOUNG ADVOCATES FOR FAIR
EDUCATION,

Plaintiff,

vs.

Case No. 18 CV 4167

ANDREW CUOMO, in his official capacity
as Governor of the State of New York,
BETTY ROSA, in her official capacity as
Chancellor of the Board of Regents of the
State of New York, MARYELLEN ELIA, in
her official capacity as Commissioner of the
New York State Education Department,

Judge I. Leo Glasser

Defendants.

DECLARATION OF PROFESSOR AWI FEDERGRUEN

1. I am the Charles E. Exley Professor and Chair of the Decision Risk and Operation Division of the Graduate School of Business of Columbia University. The purpose of this declaration is to address the methodologies utilized by YAFFED in compiling its report, and the validity of the report's suggested findings.

Educational and Professional Background

2. I joined the faculty of Columbia University in 1979 after receiving my doctorate in Operations Research at the University of Amsterdam in the Netherlands. From 2002-2007, I served as the Academic Dean of the Columbia Business School. I am an expert in various areas of quantitative methodology, in particular the areas of applied probability and stochastic models, applied primarily to supply chain management, marketing and financial models. I have authored some 150 articles in the premier journals of my field and have served as Editor In Chief, Departmental Editor and Associate Editor of several of the field's flagship journals.

The YAFFED Report

3. In 2017, YAFFED released a report entitled NON EQUIVALENT: THE STATE OF EDUCATION IN NEW YORK CITY’S HASIDIC YESHIVAS. Based both on its title and on the heavy reliance YAFFED places on it in support of its claims in this litigation, I expected the report to provide direct substantiation for YAFFED’s claims that Yeshiva day schools in New York City fail to meet New York State educational standards. It does not do that. Instead, the report meanders among various topics that are at best tangentially related to these claims.

4. The report contains three sections: (i) a “survey” to assess the level of “dissatisfaction” with respect to the secular studies at various yeshivas; (ii) the income distribution found among members of the Hasidic community; and (iii) a discussion of various state and federal funding sources available to Hasidic Yeshivas

5. As explained more fully below, the report suffers from several fatal methodological infirmities, devotes a majority of its analysis to topics that bear no relation to the issue of whether Yeshivas comply with the relevant education standards, and utterly fails to substantiate YAFFED’s claim that Yeshivas do not comply with those standards.

The YAFFED Survey

6. The report drew its conclusions about Yeshiva education from a survey that YAFFED conducted to assess the level of “dissatisfaction” among alumni and parents with respect to the secular studies education at Hasidic Yeshivas. The results of this survey are what YAFFED relies upon for its negative conclusions about Yeshiva education.

7. However, a review of the “methods” section of the report (on page 74) reveals that (i) the survey “was distributed through social media, groups of yeshiva graduates and personal networks;” (ii) garnered no more than 116 responses; (iii) of which only 44 had actually

attended Hasidic secondary schools¹ at a Yeshiva in New York City. The report does not disclose how many distinct schools these respondents attended, but it appears to be somewhere between 22 (see the discussion at pages 33 and 36 of the curriculum at 22 schools) and 39 (the number of schools that YAFFED has identified in its public criticism of Yeshiva education.

8. That means that YAFFED obtained no more than two relevant responses per educational institution. This is a ridiculously low response level, both in absolute and relative terms. Especially since YAFFED itself concedes that there is a broad spectrum of curricular practices across the various Yeshivas in New York, the number of responses per institution is the relevant response measure.

9. For this reason alone, it would be irresponsible for anyone to attribute any relevance to these survey responses that serve as the backbone of the YAFFED report.

10. Best practices for survey sampling suggest that the survey sample be large enough to provide representative information about a population (Scheaffer, Mendenhall, & Ott, 2006). Here, the Yeshivas about which YAFFED seeks to draw conclusions educate approximately 57,000 students, annually, and therefore should be expected to have tens or hundreds of thousands of alumni. A self-selected “group” of responses from one or two of those alumni per institution is clearly insufficient to be representative.

11. It is also perplexing that a report used to draw conclusions about New York City Yeshivas was based on a survey in which the majority of the (small number of) respondents had not attended a Hasidic school in New York City, even at the elementary school level.

¹ Page 35 of the YAFFED report states “In high school, only 6 of the 44 New York City high school-level yeshiva students and graduates who responded to Yaffed’s survey...”

12. But the failures of the report do not end there. The surveyed “sample” appears to have been “constructed” in a haphazard and radically biased manner. There is no description of how the “yeshiva graduates” were selected. The “personal networks” are equally ill described but its designation suggests that the leaders of the organization solicited their “friends” on Facebook and other social networks. It is not much of a surprise that the Facebook friends of YAFFED and its executive director, Mr. Moster, share their worldview, and dislike Yeshiva education.

13. In other words, in addition to the size of the sample, it is crucial that the sampling procedure be designed to avoid biases. In a valid and professionally conducted study, a sample would be drawn randomly from the relevant populations, rather than the investigators seeking out specific individuals. The study should also correct for built in biases, for example overrepresentation by segments with extremely negative views who are far more motivated to respond than those with a neutral or positive view on the subject matter.

14. In fact, the bias of an online “survey” made available via social media is even worse in this instance, because, as the report itself acknowledges (p. 53) the Hasidic community does not actively participate online and in social media to the degree seen in other communities.

15. By distributing the survey through the narrow channel of its social networks, YAFFED oversampled those likely to agree with its worldview, and excluded the vast majority of Hasidic Yeshiva graduates and alumni. This is a classic coverage error, where the sample does not represent the population as a whole (Hill, Dean, & Murphy, 2014).

16. Internet surveys suffer from many disadvantages, in particular low response rates, and a lack of control of the environment and associated (intended or) unintended biases, see for example Table 7.1 in Malhotra (2012). A responsibly designed survey would reach out to the full alumni population of thousands of alumni in each school or a reasonably sized sample thereof.

17. Finally, the YAFFED report fails to disclose what questions were included in the survey, and whether they were forced-choice questions (e.g. yes/no), likert questions (i.e., respondents are asked to rate an item on a predefined scale), or open-ended questions allowing the investigators to draw fully subjective conclusions from the narratives. Beyond the number of respondents, it would be pertinent to know some basic demographics, such as whether those who responded were recent Yeshiva graduates or individuals who attended school a decade or more ago.

The Income Distribution Within the Hasidic Community

18. The YAFFED report repeatedly mentions that there is poverty among the Hasidic community, presumably to convey that the Hasidic population is poorly educated and therefore ill prepared to earn an adequate income in the United States or New York City economy. For example, in its Executive Summary on page 6, the authors state that “43% of Hasidic households are poor.” The same statistic is one of five highlighted in the population profile on page 43.

19. Differences in educational levels are, of course, an explanatory variable in characterizing differences in income distributions across different population segments. However, it is only one of many. As an example, in the United States, only 63% of the eligible population is engaged in the labor force or runs its own business, see e.g. Statista (2017). This percentage prevails even in the current economy with historically low unemployment rates. Many individuals choose to stay outside the labor force or to engage in part time jobs, for a large variety of reasons, even though they have the skills and training to be gainfully employed, on a full time basis. This consideration applies, a fortiori, to the Hasidic community where many assign the highest priority to engaging in Jewish studies, tending to the religious needs of their

community and to raising their (indeed, typically, very large) families. For many, these values take precedence over the pursuit of high or even merely comfortable income levels.

20. However, even to the extent that income distributions *are* used as a proxy for the adequacy of educational systems, it is **absolute** income levels that should be considered, rather than how these levels compare with federally specified poverty levels. The latter increase rapidly with household sizes, and, as stated repeatedly in the YAFFED report, itself, household sizes are very large in the Hasidic community. For example, the 2018 Federal Poverty Guidelines set the poverty threshold income at \$12000 for single individuals, and in excess of \$55,000 for families with 9 children, see, for example, FAMILIESUSA(2018)

21. The US Census Bureau reports on income distributions in the 59 Community Board Districts in New York City. Its source is the 2010-2014 American Community Survey 5-Year Estimates > People :Income & Earnings: income/Earnings.

22. What this data demonstrates is that the Williamsburg and Borough Park Districts -- where the vast majority of New York City Hasidic families reside -- rank in the top or second quartile of the 59 districts, respectively.

23. More specifically, Williamsburg has the 14th largest percentage of males with an annual income in excess of \$100,000, and Borough Park has the 27th largest in this ranking. The two districts assume very similar positions when ranking the districts by the percentage of males with an annual income in excess of \$ 50,000. The percentages are computed with respect to the total population of males, 18 years or older.

24. These rankings are all the more remarkable when taking into consideration that:

- (a) In the Hasidic community, young male adults typically wait till their late twenties or beyond before starting their professional careers, this to

engage in full time Jewish studies. This segment of the population has zero or close to zero income from wages, salaries or business profits.

- (b) In the Hasidic community with its very high birthrates, the age bracket between 18 and 30 represents a very large percentage of the total population of individuals 18 years and older.

25. To summarize my conclusion: the income distributions in Williamsburg and Borough Park, far from signaling inadequate educational preparation, compare favorably with the majority of New York City community board districts.

Government Funding Available to Yeshivas

26. The YAFFED report devotes 15 pages to a discussion of various federal and state funding available to Yeshivas. It is entirely unclear how this information sheds any light on the question whether the Yeshiva curricula comply with New York State standards, the stated concern of the report and this litigation. The report's Executive Summary characterizes the government funding as "exorbitant sums of public funding despite their private status."

27. The impression conveyed by this section of the report is that it is meant to paint a picture of a population that is a burden on taxpayers. Once again, however, the report's findings are not supported by the discussion on which it relies, leading to a fundamentally misleading conclusion.

28. Title I –III funding is identified as, by far, the single largest source of federal funding available to yeshivas. The report asserts that Hasidic yeshivas "receive tens of millions of these Federal funds" but provides no substantiation for this assertion.

29. Most importantly, even if the unsubstantiated funding numbers were to be accepted at face value, they represent, at most, an average of several hundred dollars per Yeshiva student in New York. (The report puts the total Titles I - III funding for all non-public schools in

New York City at \$127 million. But there are 110,000 Yeshiva students in New York City, and a total nonpublic school enrollment of more than 250,000.).

30. Contrast this with the cost for each public school student. Data obtained from the U.S. Census Bureau reveals that New York State public schools received a total of \$25,730 per student from federal, state and local governments in the 2016 fiscal year. See Table 11 in the "2016 Annual Survey of School System Finances", conducted by the US Census Bureau.

31. Parents who enroll their children in religious schools are subject to the same school and other taxes as families that utilize the public schools, and do not receive any tax benefit (neither a credit nor a deduction) for the religious school tuition they pay. This means that state and local government, and hence the taxpayers, achieve a net savings of at least \$25,000 per student, as a result of the privately funded Yeshiva system.

32. Since there are more than 110,000 children educated in Yeshivas in New York City, the cost savings to New York City and State is estimated to exceed \$2.75 billion annually, or \$27.5 billion over each decade. And there are an additional 55,000 students enrolled in New York Yeshivas outside of New York City. This means that the total statewide savings achieved by state and local governments as a result of the Yeshiva system exceeds \$ 4 billion annually.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my knowledge.

Executed this 2nd day of November 2018, at New York, New York.


AWI FEDERGRUEN