

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

PARENTS FOR EDUCATIONAL AND RELIGIOUS LIBERTY
IN SCHOOLS; AGUDATH ISRAEL OF AMERICA; TORAH
UMESORAH; MESIVTA YESHIVA RABBI CHAIM BERLIN;
YESHIVA TORAH VODAATH; MESIVTHA TIFERETH
JERUSALEM; RABBI JACOB JOSEPH SCHOOL; YESHIVA
CH'SAN SOFER – THE SOLOMON KLUGER SCHOOL;
SARAH ROTTENSREICH; DAVID HAMMER; ABRAHAM
KAHAN; RAPHAEL AHRON KNOPFLER; and ISAAC
OSTREICHER,

Petitioners,

For a Declaratory Judgment and a Judgment Pursuant to Article 78
of the Civil Practice Act and Rules

-against-

BETTY ROSA, as Chancellor of the Board of Regents of the State
of New York; and MARYELLEN ELIA, as Commissioner of the
New York State Education Department,

Respondents.

AFFIRMATION OF ANDREW WEINSTOCK, ESQ.

1. I am an attorney and the Chief of Staff and Associate Director of Education Affairs at Agudath Israel of America. My responsibilities include overseeing aspects of our Education Affairs department, which informs, updates, and represents yeshivas across New York State. Prior to joining Agudath Israel I worked at Deloitte Tax, LLP for seven years. While at Agudath Israel I have worked with hundreds of yeshivas.

2. The purpose of this affirmation is to describe the coursework mandated in the “Substantial Equivalency Review and Determination Process” and associated documents (collectively, the “New Guidelines”), issued by the New York State Education Department on November 20, 2018, as amended in December 2018.

3. This affirmation also discusses the instructions regarding the implementation and enforcement of the New Guidelines that the State Education Department provided to local school districts at two trainings that I attended, on December 20th, 2018 and February 7th, 2019.

The New Guidelines

4. The NYSED Substantial Equivalency website¹ features a complex web of documents for local district superintendents to navigate: the Guidelines, a PowerPoint presentation, four different versions of “Toolkits,” a Frequently Asked Questions document, and a Best Practices document.

5. The Best Practices document, in turn, contains links to 13 other websites which further “clarify” the standards required. This level of complexity would be unnecessary if the New Guidelines were simply requiring conformance to clear, established, basic standards. Cumulatively these documents span hundreds of pages, and create an educational regime upon private schools that is onerous, opaque, and subject to uneven and subjective interpretation. In short, it imposes a process that is ripe for bureaucratic abuse, with religious and independent school parents, children, and schools the victims.

6. The New Guidelines impose many significant instructional and other obligations in addition to those listed in Appendix A. Below are some of the “Requirements” (not suggestions) listed in the Toolkits. Each of these Requirements has an adjoining column which asks “Is the

¹ <http://www.nysesd.gov/nonpublic-schools/substantial-equivalency>

requirement met" with a checkbox for "Yes" or "No." There may be a Notes section, but the checklists present a binary choice – Yes or No.

7. "Instruction may be given only by a competent teacher." This requirement, which by its terms is not limited to teachers of specific courses, may be assessed based on evidence of hiring standards, teacher evaluations, teacher training, and professional development.² No objective standard of review is provided, and no basis is given to justify assessments of all private school faculty.

8. "Instruction in civility, citizenship and character education." The includes a requirement,³ which begins in kindergarten, that instruction be provided on issues such as tolerance, which is defined as awareness and "sensitivity to people of different races... sexual orientations, genders, and sexes." The New Guidelines includes this as a requirement for all nonpublic schools, notwithstanding that by regulation this is applicable only to public schools.⁴

9. "For all students over the age of eight, a course of instruction similar to that requirement in public schools for the development of... the worthy use of leisure time"⁵ It is unclear what the "worthy use of leisure time" is, and who adjudicates it or its representative curricula, but the New Guidelines requires that evidence of such curriculum be shown.

10. "For all students, instruction in highway safety and traffic regulation"⁶ This is seemingly a requirement of all schools, regardless if driver education is offered by the school.

11. "In all schools, instruction in fire and arson prevention"⁷ This question references Appendix B, which lists an additional ten questions detailing how fire drills are to be performed,

² Commissioner's Determination Elementary and Middle School Review Toolkit, p. 7.

³ Ed. Law §801-a

⁴ <http://www.p12.nysed.gov/part100/pages/1002.html>

⁵ Commissioner's Determination, p. 8.

⁶ Id at p. 8.

⁷ Id at p. 9.

including “Were eight of the twelve drills held between September 1st and December 31st of each year? Of eight of the evacuation drills, were four through the use of fire escapes on buildings where fire escapes are provided or through the use of identified secondary means of egress? Were drills conducted at different times of the school day?” Health and safety in all schools is surely of utmost importance. And it is perhaps understandable to include such requirements in a licensure regime. But these issues bear no relation to the substantial equivalency of instruction.

12. The New Guidelines also incorporate other building code requirements and a review of fire inspections reports. Again, these are not relevant to the substantial equivalency of instruction, but are features that you would expect to find as part of a comprehensive licensure regime.

13. Similarly, the New Guidelines introduce public health laws and records of students as required aspect of substantial equivalency of instruction. Again, these are further indicia of the New Guidelines operating as a licensure regime. There is no basis in the Public Health Law or any supporting regulations to bind compliance with these (important) health issues to the substantial equivalency of instruction.

14. In addition to the myriad specific instructional and other requirements of the New Guidelines, they also mandate (at page 22) that nonpublic schools answer the questions such as “Are students making academic progress as they move from grade to grade? Does the school have a process for determining academic progress?” Responses are to be supported by (a) list of standardized tests administered to students in each grade; (b) data on standardized test scores; (c) other assessments used for progress monitoring; (d) samples of students report cards; (e) goals for student achievement and educational programs; and (f) process for administering assessments and analyzing data, among other things.

Substantial Equivalence Trainings Conducted by the State Education Department

15. I attended two training sessions administered by the State Education Department for local district school officials and private school representatives. The first was held on December 20th, 2018 in Albany, and the second was on February 7th, 2019 in New York City.

16. Both trainings were presented by Commissioner MaryEllen Elia and Assistant Commissioner Christina Coughlin and other SED staff. The bulk of the sessions were dedicated to a description of the coursework found in the Toolkits and a review of the overall process.

17. There was considerable pushback and concern voiced at the December 20th training regarding the potential for politicization of such inspection. It was noted that school districts and private schools have, in several areas, contentious, antagonistic, and even competitive relationships. How could a review by such a body have any chance of being fair?

18. Moreover, it was noted by District Superintendents that, if religious schools are to be visited, many of whom spend a considerable part of their day studying texts in ancient Hebrew and Aramaic, how would they be qualified to review the educational content of such material?

19. At the February 7th training, I questioned what the result would be if some but not all of the requirements found in the Toolkits were found to be satisfied? For example, say there are 25 subject areas listed in the Toolkits, what if 24 are checked “Yes?” 20? 15? Does it matter which items are checked? What if a school is found to provide exemplary education, but has no course offerings on the New York Constitution; or on “hygiene,” or does not properly administer fire alarms at different points of the day (all listed as absolute requirements in the New Guidelines)? I received no clear answer to these questions, despite four other individuals asking the same question during the trainings, in various ways, throughout the two hour session. I have

been told that at a more recent training session it was stated that all checklist items must be satisfied for a school to be deemed substantially equivalent.

20. An additional concern was raised by a school board member. She queried, what if she votes to find a school substantially equivalent, and then years later a parent or former student files suit, impugning her role in approving a school that is later alleged to have been inadequate. She expressed that school board members are uncomfortable being involved in these matters for these and other reasons. She therefore expressed a clear disincentive for approval for fear of potential liability, with little corresponding upside for school boards to approve a school. And the very basis for the concern presumes that the school board vote is akin to a license.

The Hours Conundrum

21. The New Guidelines require nearly 4.4 hours of instruction for 7th and 8th grade students given the four afternoon a week secular studies schedule of most Orthodox yeshivas. The hour requirements for high schools appears higher still.

22. Data obtained from the State Education Department pursuant to a recent Freedom of Information request demonstrates that Orthodox yeshivas with a dual-curriculum that have secular studies four afternoons a week for less than 4.4 hours each day often far outperform their public school peers to whom they are supposed to be substantially equivalent.

23. That data analyzed the top 25 performing schools for each of the 14 Regents subjects in the 2012-2017 school years – 350 schools in all (25 x 14). Of the 350 highest performing schools and districts across the state in the most recent year reported, **207** of them were yeshivas. Note that the average public school Regents score in Kings Country, where many yeshivas reside, was 67.9%.

24. The irony is that the yeshivas that provided me with an excellent education could not satisfy the requirements of the New Guidelines. For starters, the schools I attended (and hundreds like it) did not offer dance or the visual arts; courses on the New York Constitution; or instruction in “family science” (again, all listed as absolute educational requirements in the New Guidelines). Nor did we receive the requisite – according to the New Guidelines – hours of instruction. In other words, our inputs didn’t measure up, even though our actual education and outputs may have been exemplary.

25. The vast majority of the 207 high performing schools yeshivas noted above, did so while dedicating less time to the secular studies portion of their day as compared to their public school (and even private school) peers. Their statistically remarkable performance on standardized, objective, multiple-choice exams, demonstrates that the rigorous yeshiva dual-curriculum model – while perhaps of a different structure than many are accustomed to seeing, is no handicap at all, and evidences that a one-size-fits-all approach to education that myopically focuses on inputs, is not educational, legally, or statistically sound.

Consequences of Non-compliance

26. Finally, any review of the New Guidelines would be incomplete without a review of the consequences of non-compliance.

27. Per the New Guidelines, “If the board of education makes a determination that the school does not meet the standard of substantial equivalency, then: The LSA shall provide written notification to the administration of the nonpublic school and the parents or persons in a parental relationship of students attending the school of such determination and that the students will be considered truant if they continue to attend that school. The board will provide a reasonable

timeframe (e.g., 30-45 days) for parents or persons in a parental relationship to identify and enroll their children in a different appropriate educational setting.”⁸

28. The 30-45 day timeline described in the New Guidelines, after which point parents can be charged with criminal truancy, including jail time, is draconian.

Conclusion

29. The New Guidelines contain references to many laws. Upon examination, many of the referenced laws do not apply to private schools. Others, such as those relating health and safety regulations and building and fire codes, do not pertain to substantial equivalence of instruction. The training sessions offered by NYSED may have been intended to fully prepare district superintendents to implement and enforce these New Guidelines against private schools, but they have only raised new questions about the Guidelines. The consequences to the State’s more than 1800 private schools and their 400,000 students and their parents if the New Guidelines are implemented and enforced as they are will be devastating.

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 28 day of March 2019, at New York, New York.


ANDREW WEINSTOCK

Affirmed before me this 28th day of March, 2019



DAVID ZWIEBEL
NOTARY PUBLIC-STATE OF NEW YORK
No. 02ZW6063735
Qualified In Kings County
My Commission Expires 09-10-2021

⁸ Substantial Equivalency Review and Determination Process, p.7.