

ANTI-YESHIVA CASE DISMISSED: MORE WORK AHEAD

WHAT HAPPENED? WHAT DOES IT MEAN? WHAT'S NEXT?



I've heard that YAFFED recently lost an important case. What happened?

YAFFED sued the state to declare the "Felder Amendment" unconstitutional for evaluating yeshivos. The Felder Amendment says that bilingual schools with very long school days must teach core math, reading, writing, science, and history to defined standards while looking at "the entirety of the curriculum" when evaluating the critical thinking skills taught. This includes skills acquired during our yeshivos' many hours of *limudei kodesh*. YAFFED, seeking to enforce an inflexible public school-like curriculum, finds this unacceptable. Judge Glasser dismissed the case because YAFFED had no standing, meaning YAFFED could not challenge a law that did not legally impact it.

Who were the parties in the case?

YAFFED named the Governor, Chancellor, and Commissioner in its suit. A top international litigation law firm, Quinn Emanuel Urquhart & Sullivan, LLP, provided YAFFED with pro-bono representation.

YAFFED was supported in an *amicus curiae* ("friend of the court") brief by Footsteps, an organization describing itself as "a NYC based non-profit devoted to assisting and supporting individuals attempting to leave their ultra-Orthodox Jewish communities."

The State of New York was supported by an *amicus* brief submitted by Parents for Educational and Religious Liberty in Schools (PEARLS); Agudath Israel of America; Torah Umesorah; and the United Jewish Organizations of Williamsburg (UJO).

Exclusive FJJ Interview with Avrohom Weinstock Esq.

Chief of Staff & Associate Director of Education, Agudath Israel of America

What was YAFFED's argument for standing?

YAFFED argued that the Felder Amendment required YAFFED to redirect its advocacy efforts towards having the Amendment rescinded; impeded fundraising; required YAFFED to hire a PR firm; and shifted "time and money [otherwise spent] collecting speeches and interviews that ultra-Orthodox leaders have made" to use against them.

The judge was unconvinced.

Great, so does that mean the issue has finally been resolved?!

No. This victory was a decisive and critical step. But there is significant work ahead. The state is training staff and gearing up for its "equivalency" inspections. The inspections are based on the authority of the *New York State Education Department* (NYSED), not the Felder Amendment. Inspectors will be using NYSED Guidance which mandates teaching visual arts, theater, media arts, career development, occupational studies, physical education, family science, consumer science, patriotism, tolerance of all lifestyles and orientations, worthy uses of leisure time, and more. Subjects must be taught for a substantial number of hours per day. The penalties of noncompliance are severe. As this is new territory, significant questions as to what extent and how these requirements will be implemented remain, and NYSED has not, at this point, sufficiently clarified these uncertainties.

What is the upside to this legal victory?

The victory holds open the door of a private school evaluation that better respects our parental and religious rights. Every student, from every school, must emerge with a sound, basic education, but the Felder Amendment is not laden with pages of rigid checkboxes, potentially objectionable subjects to be taught, and excessive state-mandated time blocks.

I've read YAFFED say, in countless scathing articles, that they are fighting to prevent what is occurring

in the "weakest" schools (or those learning *b'kdusha*, depending on your perspective). They claim students in these schools are not prepared for the modern world. The Catholic schools, the yeshivos, and the independent schools all agree that the NYSED Substantial Equivalency Guidelines are government overreach. The Felder Amendment seems to be a happy medium, absolutely requiring students to emerge with the skills to properly function as citizens and in the workforce, while less conflicting with parents' autonomy in choosing schools for their kids. But YAFFED has actually been fighting the Felder Amendment in court for months! How do you explain this?

Let's just say we haven't figured that out yet.

Bottom line: the NYSED Guidelines threaten my religious and parental rights to raise my child as I see fit. With this legal victory in hand, why doesn't Agudah just sue the state and ask for an injunction? What are you waiting for?

In the past few years alone, the Agudah has fought (and B"H won) legal battles defending kaparos and bris milah in NYC; eruvim in Mahwah and Upper Saddle River; the building of shuls and yeshivos in Jackson, Toms River, and throughout the country; countless individual cremations, autopsies, Shabbos workplace observance challenges, and scores of other battles. Agudah is no stranger to employing the legal system, when necessary, to legitimately defend Jewish practices.

Yet, in every case, the Agudah uses litigation as a last resort, after discussion and negotiation fail. This case, specifically, involves various political forces.

While the judge in the present case was sympathetic, one never knows who the next assigned judge will be. There is still a window of time until the Guidance is enforced to pursue advocacy efforts. We can always visit court after these options are exhausted. Once we go to court, and the matter is under

litigation, there are legal restrictions as to what politicians can discuss and negotiating avenues that close. Once you've filed a lawsuit it's harder to go back and say, "actually, let's try to resolve this."

I have a friend who took the LSAT after learning in BMG and went straight to Harvard Law School. Doesn't that prove the value of a yeshiva education?

Sort of. While there are many, many cases of highly successful yeshiva graduates, I'd hate to put too much stock into anecdotal or individual evidence. Not everyone becomes a lawyer. I'd prefer to argue that our education prepares us for life.

In parts of France, middle schoolers are required to take a course training them to differentiate between real news and misinformation. Russian hackers, we learn, have been exploiting our inability to do so distinguish for years. NYS is now replacing "Common Core" with "Next Generation Standards," so as to be less content-based and more skills-based.

We are living in an age of unprecedented information available at a "Hey Google," and an unprecedented lack of understanding of what to do with it. We navigate a sea of information that is a mile wide and an inch deep. In our yeshivos and Bais Yaakovs, our children are taught to distinguish between primary and secondary sources; to question; to look at things from multiple intellectual perspectives and weigh the veracity of each approach; and perhaps most importantly; to be decent, moral, *Torahdike* human beings. Our educational system is at once perhaps the oldest and most cutting edge in the world. That's the universal value of a yeshiva education, whether or not you go to Harvard Law.

Does that mean you think our yeshivos are perfect?

I think our yeshivos and Bais Yaakovs are our communal treasure, and the underpaid men and women who selflessly drive it are to be lauded.

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Parents have a broad variety of excellent yeshiva options to choose from, depending on their values and priorities.

But there is always room for improvement. No bureaucrat should be handing us rigid checkboxes of what to teach, how to teach it, and for how long. I'm not an educator, but in every other industry, when you put more time and money into a system and yield lesser returns that's not something to be celebrated. There is no sense in NYSED mandating hours for kids to be seated/chained to a desk and not look at the returns. We have the data to prove that 4-5 hours per day of secular studies is unnecessary to produce real results. But the time spent in secular studies should be spent wisely and in a way that sustains interest. Agudah has been working with several talented individuals who have pioneered ways to make secular studies interesting and relevant. When was the last time you used Trigonometry? Instead let's teach business math; weighing an ARM vs. 30 year fixed mortgage for when you buy that house; earth science with *kiddush hachodesh*; biology with *niflaos haborei* - there are countless, creative educational opportunities to integrate disciplines and excite and inform rather than having a system imposed on us that doesn't reflect our values or desired outcomes.

Finally, it was painful to read some of the transcripts of the ex-yeshiva, ex-frum, students. One complained that he was creative and musically inclined, but a poor student. He did not fit in, and blamed his parents for not giving him an outlet outside of school. Of course, that is not a justification to seek vengeance on a whole system. But there is deep pain there, which will now only be quenched by reciprocal pain in the perceived aggressors. The point is, this *parshah* is a wake-up call of the awesome responsibility that every *mechanech* and parent has. We graduate hundreds of thousands of well-adjusted, *frum* kids. If even 1% slip through the cracks, that's thousands of adults who may grow up with antipathy toward "the system." We have to recognize and take care of every single student *al pi darko*, guide and have a path for those who don't fit in the box, and treasure every *neshamah* in our care.



*Avi Schick, Esq., of Troutman Sanders LLP, was the lead draftsman of the *amicus* brief in the dismissed anti-yeshiva case.*

What was the judge's assessment of yeshivos?

The judge, citing the *amicus* brief submitted by PEARLS and Agudah, said yeshivos, "are responsible for the rebirth of the Jewish community out of the ashes of destruction in Eastern Europe, and are what today ensures and allows for the continuity and growth of the Jewish community in New York and around the country."

What can I as a citizen do to help out?

The decisive legal victory was welcome. Avi Schick, Esq., of Troutman Sanders LLP, was the lead draftsman of the *amicus* brief and was masterful in his representation on behalf of our community. Others, too numerous to list, have joined the fray and been invaluable in this battle. But there is further work to be done. Our advocacy is only as effective as the support of the community behind it. Scarcely a week passes without an inflammatory article in the popular press decrying the "ultra-Orthodox" yeshivos and their quaint (they are usually less charitable) preoccupation with ancient and medieval religious texts, at the expense of values and subjects society deems more important. This is all many politicians know of the matter. If you have not already, sign the petition at yeshivosbychoice.org. Call or email your state representative to voice your concerns, confidently but respectfully, about rigid government oversight to our private schools. Tell them, and others, how important our schools are to us. We indeed must ensure that our educational system and values, "allows for the continuity and growth of the Jewish community in New York and around the country."