



Submitted Comment

RE: Proposed Addition of Part 130 of the Regulations of the Commissioner of Education
Relating to Substantially Equivalent Instruction for Nonpublic School Students

The Coalition for Jewish Values, representing over 2,000 traditional, Orthodox rabbis in matters of public policy, has seen and reviewed the new proposed Part 130 of the Commissioner of Education's regulations pertaining to "substantially equivalent instruction" for nonpublic school students. This proposed intervention is unwarranted, unconstitutional as applied to parochial education, and obviously detrimental to the excellence both sought and demonstrated by *yeshivos* in New York State.

New York State, in the proposed regulations, would grant "school authorities," both state and school district officers, the right to intervene in *yeshiva* education and override the choices made by parents in consultation with their religious leaders. First and foremost, this violates the freedom of parents to choose their own preferred form of education as part of their religious freedom, ensconced in the Bill of Rights and confirmed by the Supreme Court in *Wisconsin v. Yoder*. But it also ignores the obvious and marked superiority of the educational outcomes demonstrated by those who graduate from the *yeshiva* system. And finally, it grants undue credence to activist groups clearly motivated by animosity towards Orthodox Jewish life—indeed, it is clear that state regulations initiated to appease such groups cannot help but be infected with the same ugly bias.

Educational Success

What is the goal of education? George Washington said that schools should teach virtue and morality, and for students to value their own rights.¹ Thomas Jefferson proposed that children be educated "to improve, by reading, his morals and faculties; to understand his duties to his neighbors and country, and to discharge with competence the functions confided to him by either."² More recently, Martin Luther King, Jr. wrote that "the function of education... is to teach one to think intensively and to think critically... [but] intelligence is not enough. Intelligence plus character—that is the goal of true education. The complete education gives one not only power of concentration, but worthy objectives

1 Jacobsen, Rebecca and Rothstein, Richard, "The Goals of Education," *Economic Policy Institute*, Dec. 4, 2006. https://www.epi.org/publication/webfeatures_viewpoints_education_goals/

2 Jefferson, Thomas et al., "Report of the Commissioners Appointed to Fix the Site of the University of Virginia, etc.," in Roy J. Honeywell, ed., *The Educational Work of Thomas Jefferson* (New York: Russell and Russell, 1964), Appendix J, pp. 248-60.

upon which to concentrate.”³ To this day, skills such as critical thought, the ability to logically attack a problem, and moral development all remain touted by educators as key goals.⁴

By the standards of these great Americans and modern-day teachers, the *yeshivos* are doing a far better job providing an education than are the public school systems of New York State. This is so clearly true that calling for *yeshivos* to demonstrate “substantial equivalency” is tantamount to demanding a massive and harmful *reduction* in the quality of education provided by the *yeshivos*.

How should we measure whether students have learned virtue, morality, and character? Murder rates? Violent crime? Domestic assault? Drug or alcohol abuse, or ability to retain a job? How about the expectation that one who sires a child will engage in fatherhood throughout that child’s upbringing? There isn’t a school system in New York that can hold a candle to the *yeshivos* in any of these areas.

How do we quantify the ability to think, improving a person’s “faculties,” as Jefferson put it? In 2015, the National Association of State Boards of Accountancy announced that the school in New Jersey with the highest first-time pass rate on the CPA exam was *Bais Medrash Gavoha* in Lakewood, a rabbinic school that offers no accounting courses. *Yeshiva* graduates also outperform in law, medicine, computer science, and a host of other technical fields, none of which they learned in *yeshiva* itself.

These successful outcomes result directly from the core study method of the *yeshiva* curriculum, which teaches critical thought, academic diligence, and intellectual self-improvement in a way that classes in English, history, geography and even the hard sciences cannot duplicate. Talmudic reasoning applies problem-solving to areas far more broad than algebra or geometry. It intersperses detailed lessons in logic and argumentation with education in history, government, economics, mathematics, legal adjudication and conflict resolution, all while teaching multiple foreign languages.

Moreover, *yeshivos* aim to produce alumni who will continue this style of education, regardless of their chosen career paths, throughout their lives. On January 1, 2020, just months before COVID-19 put a temporary end to large gatherings, more than 100,000 observant American Jews filled MetLife Stadium in New Jersey, the Barclays Center in Brooklyn, and other locations across the country for a unique gala. Called simply “The Siyum,” meaning “the completion,” it honored the tens of thousands of religiously motivated men — and significant number of women — who completed a seven-and-a-half-year cycle studying the Oral Torah.

No other organization, group or culture has celebrated adult continuing education, the ongoing effort to develop critical faculties while acquiring and retaining knowledge, in any similar fashion. This is the commitment to lifelong learning that *yeshiva* education works to engender in every student.

It is clear from the foregoing that any honest, thinking, caring state education official would enter the *yeshivos* primarily to learn what public schools might emulate, to understand what lessons might be taken and applied more broadly to other school systems. For state officials, whose schools perform so poorly by comparison, to seek to set standards upon *yeshivos* is so blatantly unwarranted and disrespectful that it frankly suggests less than benign motives.

3 King, Martin Luther, Jr. “The Purpose of Education,” *The Papers of Martin Luther King, Jr. Volume I: Called to Serve, January 1929-June 1951*, University of California Press, 1992.

<https://kinginstitute.stanford.edu/king-papers/documents/purpose-education>

4 Meredith, Lee-Ann, “What are the 7 Goals of Education?” *The Educators Room*, February 12, 2014.

<https://theeducatorsroom.com/7-goals-education/>

Dishonest Brokers

A key agitator prompting state intervention in *yeshivos* has been the Yaffed organization (“Young Advocates for Fair Education”). Yaffed claims that it is building “grassroots and community-based support for change,” and also that it recognizes that “you cannot simply impose... changing the lives of 64,000 children.”⁵ In other words, Yaffed declares on its website and in its PR materials that it works within the Orthodox Jewish community, and that its efforts to change the *Yeshiva* educational system are desired by that community.

How is it that an organization can make such obviously false statements about its core mission, yet be taken seriously by supposedly educated people? Yaffed faces greater than 1000:1 opposition from the Orthodox Jewish community; the comments you are receiving on this proposed regulatory change clearly reflect that. And it is not difficult to discern why. Even a cursory look at the biographies of those behind Yaffed, as well as the organization’s tactics, pierces its veneer of collaborative benevolence.

On May 9 of this year, Yaffed produced a letter signed by “150+ Rabbis and Jewish Leaders... in support of substantial equivalency.”⁶ Notably, not a single one of these “rabbis and Jewish leaders” appears to be a member of the affected community. It is unclear whether any send their own children to schools that would be affected by the new government regulations, revealing the true extent of Yaffed’s “grassroots and community-based support.” Each and every signatory, to our knowledge, is a member of the non-Orthodox Jewish community,⁷ attempting to misuse government regulation to override the independent decision-making of Orthodox parents.

The head of the New York Jewish Agenda (NYJA), Matt Nosanchuk, signed the letter. So did Rabbi Jill Jacobs, a non-Orthodox rabbi who heads an organization called T’ruah, and who personally wrote the following, on Twitter, in late 2019:

“Our Torah is a book of actions, not a rallying point for mubling [sic] in an ancient tongue while wearing the garb of our grandfathers and gathering for a shtickle of herring afterwards.”⁸

Less than two weeks ago, the NYJA sponsored, together with Yaffed, a “virtual panel discussion” regarding the proposed regulations.⁹ Once again, the panel featured no parent, rabbi or educator from the affected community.¹⁰ The panel was, however, moderated by Jacobs. The open mockery of this one tweet clearly demonstrates that she and her allies are not interested in “grassroots and community-based support” from Orthodox Jews, but are anxious to vent their hostility. She deleted this tweet only when it was unearthed due to her participation on the NYJA panel.

Nosanchuk, the NYJA, Jacobs, and others affiliated with Yaffed previously collaborated in efforts unfairly mischaracterizing and targeting the Orthodox community. In late 2020, then-Governor Andrew

5 Yaffed, “What We Do.” <https://yaffed.org/what-we-do/>

6 Yaffed, “150+ Rabbis and Jewish Leaders Speak Out On Education in Haredi Yeshivas,” May 9, 2022. <https://yaffed.org/rabbis-leaders-speaking-out-on-substantial-equivalency/>

7 A few signatories are part of a new movement calling itself “Open Orthodoxy.” Though it claims to be Orthodox, these claims are rejected by all recognized Orthodox rabbinic bodies for [numerous religious reasons](#).

8 See <http://web.archive.org/web/20220517000409/https://twitter.com/rabbijilljacobs/status/1193548854181928962>, a snapshot archived on May 17, 2022. See also http://web.archive.org/web/*/https://twitter.com/rabbijilljacobs/status/1193548854181928962.

9 See <https://mobile.twitter.com/yaffedorg/status/1526232385800519685>

10 See footnote 7, regarding panelist Rabbi Ysoscher Katz.

Cuomo declared COVID “hot spots” that disproportionately targeted Orthodox neighborhoods, and ordered exorbitant fines be levied against small businesses and even houses of worship.¹¹ Jacobs, along with dozens of other non-Orthodox rabbis who signed the Yaffed letter of May 9, were among the “Rabbis and other Jewish religious leaders” who signed a statement crafted and published by NYJA supporting Cuomo in 2020.¹²

That earlier statement claimed that the then-Governor and then-Mayor Bill de Blasio were “using data-driven, geographically-based efforts to contain the spread of COVID-19,” which included “limiting religious gatherings in known ‘hot spots,’ and using enforcement for any gatherings which violate size restrictions.” The statement condemned “lack of compliance” from members of the Orthodox community, and referred to burning of masks in protest as “violence.”

The claims in the statement were false. Not only was the capricious closure of houses of worship unconstitutional,¹³ but the “red zones” were not based upon data regarding preponderance of COVID, but by who lived in those neighborhoods. Together, these constituted a truly repugnant instance of antisemitic bigotry at the highest levels of New York State government.

In released testimony from the investigation of Cuomo’s alleged sexual harassment in 2021, the New York Department of Health Medical Director of Epidemiology testified that the “red zones” were not driven by neutral analysis of data, as both Cuomo and NYJA had claimed. Rather, they were driven by Cuomo’s political considerations as his administration fought off increasing criticism of both his mishandling of COVID and his atrocious personal conduct. The Medical Director stated that:

There were metrics that our staff would work on, but they would only be announced... if that came from the [Governor’s Executive] Chamber. Some areas met the metrics and would be called a zone and others met the metrics and would not be called a zone. Our staff... would get very frustrated.¹⁴

In an effort to appear to be “doing something,” Cuomo scapegoated the Orthodox community as spreaders of disease, following classic patterns of antisemitic bigotry. The NYJA and its 450 non-Orthodox “rabbis and other Jewish religious leaders” vocally endorsed these antisemitic “red lines,” though the contrary evidence was already robustly available from Orthodox leaders at the time.

Following release of the above testimony, our organization called for NYJA and the 450 signatories to apologize for their support of antisemitic conduct from Cuomo’s office. Our Midwestern Regional Vice President, Rabbi Ze’ev Smason, called the NYJA statement “a transparent effort by progressives to portray themselves as ‘holier than thou’ while misrepresenting the Orthodox community as unconcerned about public health.”¹⁵

11 Millman, Jennifer, “NYC Fines Up to \$15K for COVID Violations in Effect; NY Hospitalizations Highest Since July 15,” NBC News New York, Oct. 9, 2020. <https://www.nbcnewyork.com/news/local/nyc-fines-of-up-to-15000-a-day-for-covid-rule-breakers-take-effect-friday/2660359/>

12 New York Jewish Agenda, “450+ Rabbis Support Governor Cuomo’s And Mayor De Blasio’s Efforts To Contain COVID-19 In New York ‘Hotspots’.” Oct. 7, 2020. <https://nyja.org/jewish-religious-leaders-support-efforts/>

13 Agudath Israel v. Cuomo, SCOTUSblog, Nov. 25, 2020. <https://www.scotusblog.com/case-files/cases/agudath-israel-of-america-v-cuomo/>

14 Agudath Israel, “Newly Released DOH Testimony Further Vindicates Agudah SCOTUS Lawsuit,” Nov. 11, 2021. <https://agudah.org/newly-released-doh-testimony-further-vindicates-agudah-scotus-lawsuit/>
“Testimony of [State Entity Employee #2, name redacted],” Independent Investigation Under Executive Law 63, pp. 134-135. https://ag.ny.gov/sites/default/files/2021.05.24_state_entity_employee_2_10.22.2021.pdf

Yet neither the NYJA nor any of the signatories on its statement issued any such apology. Instead, as already mentioned, dozens of the same individuals lent their signatures to the new letter from Yaffed, which once again claims that signatories know what is best for Orthodox children better than their own parents, and wishes to exploit state government intervention to have their way. Those knowledgeable in Jewish history recognize this as a tactic previously used by Communist Russia's *Yevseksiya*.

Yaffed and the NYJA's demands for government control of *yeshiva* education are no less malevolent than their backing of disgraced former Governor Cuomo's politically-motivated, antisemitic "hot spots." To work with either organization is to demonstrate, at the very least, callous indifference to antisemitic bias, at a time when Orthodox Jewish citizens are being openly targeted on the streets of New York.

Religious Liberty and Respect

The Amish community provides education to children in a one-room schoolhouse, in which students may be divided into two groups, grades 1-4 and grades 5-8, if divided at all.¹⁶ The teacher is usually a young woman, not yet married, who has only an eighth-grade education herself, much less having attended a teacher training school.¹⁷

By contrast to the Jewish educational system and its advocates, Amish leaders openly desire a lesser level of education for their children. One source explains that "The purpose [of] Amish education is not to promote individuality and critical thinking. The goal is teach children the worth of hard work, ethical living, and how to be a valuable member of the Amish community. Amish education does not seek to create artists, scientists, musicians or actors."¹⁸

In *Wisconsin v. Yoder*, the Supreme Court of the United States determined that Amish parents had the right to determine the type of education that their children receive, and to take their children from school entirely after the eighth grade, on First and Fourteenth Amendment grounds. The Court determined that the Amish, based upon sincere religious conviction, regarded compulsory high school education as contrary to their religion and way of life. It also stated that the Amish do not object to elementary education, in part, "because it does not significantly expose their children to worldly values." Ultimately, the Court acknowledged that "long before there was general acknowledgment of the need for universal formal education, the Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs."¹⁹

Although the Amish clearly seek different educational outcomes, ones that outsiders would consider seriously deficient, there is little interest in the demand of former Amish that *Wisconsin v. Yoder* be overturned or that Amish children receive a conventional education. Typical is a single article in Lancaster Online, written by an intern, covering both sides of the controversy, including balanced

15 Coalition for Jewish Values, "Will 450 Progressive Rabbis Apologize for Antisemitic Scapegoating?" Nov. 17, 2021. <https://coalitionforjewishvalues.org/2021/11/450-progressive-rabbis-apologize-scapegoating/>

16 Ohio's Amish Country Magazine, "Amish education." <https://ohiosamishcountry.com/articles/amish-education>

17 The Amish Village, "Education in the Amish Community," April 13, 2018. <https://www.amishvillage.com/blog/education-in-the-amish-community/>

18 Exploring Amish Country, "A Look at Amish Education." <http://www.exploring-amish-country.com/amish-education.html>

19 *State of WISCONSIN v. Jonas YODER et al*, 406 U.S. 205, May 15, 1972.

interviews with Amish leaders, members, and even sympathetic ex-Amish.²⁰ And the potential, unconstitutional impact of the new Part 130 upon the Amish community is, at best, an afterthought to the current debate.

In a recent study, a team of researchers determined that people with advanced degrees actually evince *greater* levels of antisemitism, rather than lesser. Researchers hypothesized—and then demonstrated—that earlier surveys were tainted by social desirability bias, the desire to answer in a way that will be viewed favorably by others. The well-educated are more fluent with and more likely to provide socially-acceptable answers.

In this new study, rather than asking questions that would openly expose antisemitic bigotry (e.g. “do you believe Jews unduly control the media?”), these researchers instead posed neutral questions regarding exercise of individual liberties, matching them with a Jewish or non-Jewish example to illustrate the same underlying concern. Subjects, particularly the better-educated, showed markedly greater tolerance for individual liberties when the non-Jewish examples were given.²¹

The inordinate level of controversy regarding Jewish *yeshivos*, contrasted with the near-total lack of interest in changing Amish schoolhouses, begs to be seen in the context of this research. Why are the Amish schools treated with what might be called benign neglect, while Orthodox *yeshivos* are subject to such intense malign attention, when it is the former that purposely do not aim to fulfill typical Western educational goals as expressed by Washington, Jefferson, King, and modern-day educators?

Naftoli Moster, the head of Yaffed, admits that “the notion that anyone would pay to send their children to schools that are inferior to the free-of-charge public school seems ridiculous.”²² The reason why it *seems* ridiculous is simply because it *is*, in actuality, ridiculous. Parents send their children to Orthodox Jewish schools at tremendous personal expense, and as a deliberate, informed choice. The boundaries between secular society and the Orthodox Jewish community are vastly more porous, and obviously so, than those between the secular and the Amish. Orthodox parents are well aware of alternative options, yet spend many thousands of dollars per child per year because they believe their child will receive a superior education and enjoy a superior outcome.

To deny Orthodox Jewish parents the ability to choose their preferred educational system for their children is clearly unconstitutional, as above, and clearly motivated, as also demonstrated earlier, by a hostile bias.

It is time for New York State to turn to items that all agree must be addressed by government, and away from attempts to dictate to parents who deliberately and expensively choose schools outside the public system. This is especially true regarding *yeshivos*, schools that compare so favorably to those under the direct governance of the state Department of Education.

20 Riley, Erika. “Former Amish want to overturn court ruling that allows Amish to take kids out of school after eighth grade,” Lancaster Online, Oct. 20, 2019. https://lancasteronline.com/features/former-amish-want-to-overturn-court-ruling-that-allows-amish-to-take-kids-out-of/article_763a8b6a-f1e0-11e9-b662-33127ad932ea.html

21 Cheng, Albert, Jay P. Green and Ian Kigsbury, “Are More Highly Educated Individuals More Antisemitic? Findings Based on a New Approach to Measuring Antisemitism Using Double Standards,” *Antisemitism Studies*, Vol. 6 No. 1, Spring 2022, pp. 70-98.

22 Moster, Naftuli, “What Happens in Williamsburg Doesn't Stay in Williamsburg,” *Gotham Gazette*, Dec. 8, 2020. <https://www.gothamgazette.com/130-opinion/9976-what-happens-orthodox-jews-williamsburg-doesnt-stay-covid>