

New York State vs. Hasidic Schools: Placing the “Substantially Equivalent” Curriculum Debate in Context

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Introduction

In New York State, private and religious schools are required to offer a curriculum “substantially equivalent” to what is available in local public schools. Substantial equivalency—which has been law for nearly 130 years—allows parents to direct the education of their children by enrolling them in the school of their choice, while also ensuring that schools meet certain standards. But in September 2022, the New York State Board of Regents (the body overseeing the state Education Department) amended the regulations governing the law’s enforcement.¹

The amendments follow a multiyear effort on the part of a small group of activists who voiced concerns over a particular group of religious schools in New York City and a few other counties in the state. These schools serve the “Haredi” Jewish community, also described as ultraorthodox. Taken as a whole, Jewish schools are now the largest bloc of religious schools in the state and city, with Haredi the fastest-growing segment.² Haredi schools are single-sex, but activists focused on the boys’ schools, since those schools emphasize Judaic and talmudic study and, according to the complaints, severely limit the boys’ access to secular subjects, running afoul of the substantial-equivalence requirement.³

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There are critical public-policy and legal issues within the debate over Haredi schools and the state’s substantial-equivalence requirement, particularly how to weigh the right to religious freedom enshrined in the First Amendment to the Constitution of the United States. This issue brief will explore those issues and attempt to place them in the context of the communities that overwhelmingly choose these schools for their children.

The public dialogue about Haredi schools and the law in New York has consistently and deliberately brought other issues into the debate, including the financial improprieties found in some Haredi schools, the alleged connection between the schools and the extent of poverty in

their communities, and other complaints about the communities themselves.⁴ It is appropriate for the state to review and sanction schools that demonstrate specific problems (as is currently the state’s practice), but the notion that these concerns are inherent to Haredi schools, alone among all types of private and public schools, is a troubling generalization. This issue brief will attempt to place those issues in context as well.

How Substantial Equivalence Became Controversial

Substantial equivalence became New York law in 1894, but, perhaps because of a combination of voluntary compliance and bureaucratic indifference, it was not aggressively enforced until recently.⁵

During the 20th century, religious schools operated within “a relatively non-intrusive New York regulatory regime,” Menachem Wecker writes in *Education Next*.⁶ Also during this period—and especially in the years around and after World War II—Haredi communities in New York began to grow.⁷ There was a second increase in the 1980s as the former Soviet Union allowed Jews to emigrate.⁸ As these communities grew, so did the size and number of their schools. While historical data on Haredi schools specifically are not available, state education data indicate that enrollment in Jewish schools of all types has grown by 68% in the state since 2001 and by 47% in Brooklyn over the same period.⁹ By all accounts, it is the more religiously focused schools that have fed this growth.

In 2001, Wecker writes, the state published guidelines suggesting that local education officials “make site inspections of non-public schools to investigate compliance only after ‘a serious concern arises,’ and then only after having an informal discussion with the school officials.”¹⁰

The current inquiry into the educational programs at New York yeshivas began in response to a 2015 complaint filed by the group Young Advocates for Fair Education (YAFFED), led by Naftuli Moster, a graduate of a Brooklyn Hasidic yeshiva. The complaint asked the state to investigate 39 Brooklyn yeshivas, alleging that they were not in compliance with the state’s substantial-equivalence regulations.¹¹

After the city started visiting these schools, State Senator Simcha Felder, who represented Hasidic communities and was often a crucial swing vote in the senate, in 2018 pushed through an amendment clarifying how the state would evaluate substantial equivalence. The new law technically applied to all nonpublic schools but was written in such a way that tailored it to yeshivas. (It applied only to schools that had bilingual programs and that had “an educational program that extends from no later than nine a.m. until no earlier than four p.m. for grades one through three, and no earlier than five thirty p.m. for grades four through eight, on the majority of weekdays.”)¹²

Because of the Felder amendment, the state education commissioner would determine whether a school met the substantial-equivalence standard. Further, a review of elementary schools would consider whether the curriculum promoted critical thinking skills “including instruction in English that will prepare pupils to read fiction and nonfiction text [and] ... construct written essays that state a point of view or support an argument.”¹³

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There were similar guidelines for mathematics, history, civics, and science. For high schools, the review would consider whether “the curriculum provides academically rigorous instruction ... the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education.”¹⁴

Felder’s amendment was initially thought to help defend yeshivas. But the commissioner of education at the time released guidelines to include teaching seven subjects in grades 1–4; and 11 subjects in grades 5–8. Secular subjects would dominate the yeshiva schoolday under this regime.

In September 2022, the New York State Board of Regents passed a resolution clarifying how the Education Department would enforce substantial equivalency.¹⁵ Under these rules, even though the state education commissioner makes the final determination regarding a school’s curriculum, the responsibility for investigating a school and making a recommendation to the commission falls to local school districts.

The resolution listed six pathways through which a nonpublic or religious school could be deemed to have a substantially equivalent curriculum without a site visit from local authorities.¹⁶ The two pathways most relevant to the yeshivas are: (1) that they are a “registered school or nonpublic school serving grades 1 through 8 that has a registered high school”; or (2) that they use “assessments approved by the Department for purposes of demonstrating compliance.... Such assessments shall demonstrate student academic progress as they move from grade to grade [and] be regularly used by the nonpublic school as part of its instructional program.” A third pathway, less relevant, would be for the school to be accredited by an agency approved by the Education Department.

The first application of the new procedures came in early October 2022. In response to a legal challenge filed by a parent against a Hasidic boys’ school serving grades K–9, State Education Commissioner Betty Rosa issued a ruling that requires the school to work with the city to develop an improvement plan.¹⁷ This decision will likely be the test case for future actions against other schools. (Also in October, and independent of the commissioner’s ruling, the largest boys’ yeshiva in the state agreed to pay \$8 million in fines and restitutions after admitting that it had misused various public funds provided to it.)¹⁸

A group of Brooklyn yeshivas, along with the groups Parents for Educational and Religious Liberty in Schools (PEARLS) and Agudath Israel of America, filed suit in New York State Court in November 2022, asking for a preliminary injunction of the state’s regulations while their case is adjudicated. Their motion argues that parents “have the fundamental right to control the upbringing and education of their children, yet the New Regulations ignore their constitutionally-protected interest by handing control over curriculum and faculty at yeshivas to local school authorities.”¹⁹

The religious-liberty argument will eventually have to be decided in the federal courts, where nothing can be taken for granted. The state has waded into a conflict with a community that is unique in ways that their critics do not acknowledge. The state has a legitimate public interest in the education of children. But, as discussed below, these schools may be unique enough that they become the exception to the general rule that gives the state the power to regulate, inspect, supervise, and examine them, their teachers, and pupils.

The Overbroad Complaints Against Yeshivas

As mentioned, the Regents’ 2022 amendments were largely prompted by complaints from a group of adults who had attended yeshivas or who had been parents of yeshiva students. Their complaint argued that the 39 schools, particularly high schools for boys, provided an inadequate amount of instruction in secular subjects to be considered substantially equivalent to local public schools. Further, this inadequacy resulted in graduates’ inability to engage and prosper in the larger secular society. They argued that these educational inadequacies contributed to high rates of poverty and reliance on public assistance within Haredi communities.²⁰

Mindful of the fact that these schools are private and children are enrolled in them voluntarily by their parents, some critics argue that the communities’ social norms act as a coercive force, making parents fearful of choosing schools other than those associated with their own Haredi community.²¹ Thus the state is legally required to sanction these schools to ensure that no parent could, willingly or unwillingly, choose substandard schooling. That these schools, like other religious and private schools, received some public funding amplified the need for state action.

Commentary and news articles published just prior to the Board of Regents’ September decision overstated the extent of the problems in the schools serving Hasidic communities. For example, a leading philanthropist opined that “the fate of a generation of Jewish children” is “at stake” because of these schools.²² Yet complaints have been raised only about a few dozen of these schools. Therefore, we should place the allegations in greater context.

The Landscape of Yeshiva Education

There are currently 277 Jewish schools of any type in Brooklyn alone, serving more than 85,000 students.²³ Statewide, 543 Jewish schools serve more than 163,000 students, or 42.8% of all students enrolled in private or religious schools, making Jewish schools the state’s largest provider of nonpublic school education.

Further, state Education Department records from 2017 (the most recent data available) indicate that 131 Jewish schools in Brooklyn (47% of the total) are “registered” by the state, and another 21 are under review for registration. Sixty-six schools are “not registered” (28%), but 37 of those are elementary schools, which cannot apply for registration unless they are affiliated with a high school. (Registration information was not available for another 59 schools.)²⁴

Registration is important under the new rules because a school that is registered by the state is deemed to be following the substantial-equivalence requirement. Given the large number of Jewish schools, whatever problems exist in a few are not generalizable to all Jewish schools or even all Haredi schools; nor are they generalizable to “a generation of Jewish children” (over 70% of adults who were raised Jewish report that they never attended a full-time Jewish school, according to a Pew Research Center poll).²⁵

Public Funding of Yeshiva Schools

A second theme in the allegations against yeshivas is that these schools are “flush with public money,” as one influential 2022 *New York Times* headline stated.²⁶ Critics describe this as the public financing of religious education.

The *Times* looked at more than 100 boys’ schools (it does not give the exact number) “spread across Brooklyn and the lower Hudson Valley” and summarized its findings on public money in these schools as “more than \$1 billion over the last four years alone.” Elsewhere, the report describes the funding for these roughly 100 schools as \$375 million in the “last year before the pandemic,” before noting that the “money is flowing as New York City is cutting public school budgets.” This description leaves out important details. The cut to public-school budgets references actions by Mayor Adams’s administration to align 2022–23 individual public-school budgets with the reality of decreased enrollment levels.²⁷ Despite those cuts, the overall fiscal year 2023 budget for the city’s Department of Education budget increased over the previous year.²⁸ The overall budget is \$38 billion for the 2022–23 school year, and another \$20 billion to build and renovate schools.²⁹

But much of the \$375 million in public money that flows to these yeshivas is federal antipoverty money.³⁰ According to the *Times*, the schools received roughly \$100 million to provide meals to students from low-income families and another \$100 million from federal Title I programs, which provide financial assistance to local schools.³¹ These dollars are irrelevant to whatever cuts are being made in public-school budgets because they are funds provided to the city by the state or federal governments, based on the number of students eligible for these programs; they cannot be used to offset declines in general school budgets.

According to the *Times*, a city-funded child-care voucher for low-income families provides about \$50 million a year to yeshivas that describe the end of their schoolday as child care (the *Times* gives no context for whether other religious and private schools run after-school educational child-care classes with the vouchers). The report states that more than a third of the total program funds are allocated to Hasidic neighborhoods. Whether this is because Hasidic families are more aggressive in applying for these funds or whether there is a flaw in the way the city administers the program, we do not know. But at no point has it been argued that these families are receiving these funds inappropriately.

Table 1

Enrollment in Jewish Day Schools by Classification, 2018–19

Classification	New York City	NY–5 Suburban Counties	Lakewood Township, NJ	U.S. Outside NY and NJ	Total	National %	New York State as % of National
Yeshiva World	31,251	10,739	30,247	25,359	97,596	33.4%	43.0%
Hasidic	55,485	35,122	3,437	335	94,379	32.3%	96.0%
Modern Orthodox	9,685	3,760	—	15,996	29,441	10.1%	45.7%
Centrist Orthodox	4,221	3,773	—	12,271	20,265	6.9%	39.4%
Community	1,736	164	—	17,926	19,826	6.8%	9.6%
Chabad	6,890	1,314	—	7,204	15,408	5.3%	53.2%
Solomon Schechter	564	1,068	—	6,217	7,849	2.7%	20.8%
Reform	428	—	—	2,653	3,081	1.1%	13.9%
Immigrant/Outreach	1,889	—	—	481	2,370	0.8%	79.7%
Special Education	1,206	425	—	326	1,957	0.7%	83.8%
Total	113,355	56,365	33,684	88,768	292,172	100.1%	58.1%

Source: “A Census of Jewish Day Schools in the United States, 2018–19,” Mordechai Besser, Avi Chai Foundation, August 2020

Note: Classifications are those used by Besser and the Avi Chai Foundation, though they largely reflect the self-categorization of the schools.

Generally, the term “Orthodox schools” refers to Yeshiva World, Hasidic, Modern Orthodox, Centrist Orthodox, and Chabad. Yeshiva World, Hasidic, and Chabad schools (in New York and New Jersey) are generally considered Haredi, educating boys and girls separately and emphasizing Judaic study. Chabad schools outside New York and New Jersey are affiliated with the Chabad movement but educate a significant number of students from nonorthodox families.

Modern Orthodox and Centrist Orthodox schools tend to have strong instruction in both Judaic and secular subjects.

“National %” column does not total 100% because of rounding.

The *Times* also identified \$30 million in higher-education financial aid going to students enrolled in post-high school rabbinical studies programs housed at some yeshivas. This seems unrelated to the elementary and high school programs that are under discussion.

Other public funds ascribed to these schools include state funding for student transportation to and from school—which is available to all private- and religious-school students who meet the requirements—and additional state money paid to all private and religious schools to comply with certain mandates related to record-keeping, assessment, and student health.

There is no evidence that all these 100 schools are guilty of the most egregious incidents included in the *Times* reporting or that they are all guilty of failing to meet the substantial-equivalence requirement. Yes, there is some public money going into these schools; but no, most of it could not otherwise be used to support public-school budgets. If New York State and the federal government provide funding for various educational and support programs to private schools, they cannot exclude religious schools from participation. However, schools receiving these funds are required to conform to the conditions of the funding. Failure to comply should have consequences. If the schools are using city-funded child-care credits inappropriately, that is a reason to tighten up the regulations on how that money can be used by eligible families, not a rationale for overhauling the schools’ curricula.

The Core of the Debate: What Is Education For?

At issue in this debate are two competing visions of the purpose of education. Adhering to one vision, many educators believe that the purpose of schooling is to liberate children from the parochialism of their parents’ cultures and beliefs. This belief was common in the Progressive Era at the onset of the 20th century, as the U.S. was working out how to inculcate various waves of immigrants into American culture. This is the public nature of education. Not all immigrants were opposed to this; they came to the U.S. to escape poverty and social constraints and wanted their children to succeed. Still, for parents who hold an opposing vision of education—one that focuses on the private nature of education and the well-being of their own children—it was a challenge.

Catholic Education and Religious Freedom

For instance, Catholic immigrants negotiated the tension between assimilation and preservation of the old culture by placing their children in Catholic schools. They were not turning their children over to the state’s public education system; they were entrusting their children’s well-being to the Church. The Catholic Church in the U.S. established these schools for purely

religious purposes, to have Catholic students educated in Catholic schools with Catholic values. They would use the Church-approved version of the Bible, not the Anglican, Lutheran, or other Protestant versions that were common in public schools at that time.

The Catholic Church and its religious congregations supported not only elementary and secondary schools but also colleges, which served the most academically oriented of the high school graduates. These colleges also functioned as a training ground for future teachers and leaders of Catholic schools. Even though the Catholic education system did not avoid instruction in secular subjects, it was subject to attack from the state as late as 1922, when Oregon amended its compulsory education law by removing private and parochial schools from the list of approved routes to comply with its compulsory education law.

The issue ultimately reached the U.S. Supreme Court in *Pierce vs. Society of Sisters*.³² The opinion set the parameters for state involvement in private religious schools by ruling that “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,” while also noting that “no question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school.”

The experience and priorities of today’s Haredi communities vary from those of the earlier waves of many Catholic, Protestant, and Jewish immigrants, the only commonality being hostility from the dominant culture of their times. Earlier immigrants certainly sought religious freedom, but most Catholics and Protestants had that freedom in Europe. Many of them came to the U.S. seeking prosperity and economic freedom. Many Haredi families were motivated by much more basic needs and desires—to survive and to be able to practice their religion openly and as they saw fit.

The twin evils of Nazi Germany and the Soviet Union targeted Jews’ very existence and their ability to openly practice their religion, respectively. Thus, the primacy of preserving their culture and religion is at the heart of their schools. Some Haredi Jews perceive criticism of their schools as an attack on their culture.³³ The uniqueness of the Haredi experience in Europe is important, given a Supreme Court ruling that came decades after *Pierce*.

The Amish Exception in Education Policy

The 1972 *Wisconsin v. Yoder* case concerned the wish of Wisconsin’s Amish communities not to have their children be subject to the state’s compulsory education law beyond grade 8.³⁴ They believed “that high school attendance was contrary to the Amish religion and way of life, and that they would endanger their own salvation and that of their children by complying with the law.”

The court ruled in favor of the Amish, which it described “as a successful and self-sufficient segment of American society,” finding that “the conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith.” In doing so, the court noted the uniqueness of the Amish way of life and that these communities “have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life ... and the hazards presented by the State’s enforcement of a statute generally valid as to others.” This came with a warning that this showing was one that “probably few other religious groups or sects could make.”

In commentary on the debate over yeshivas, Michael Helfand noted that “the Court may have protected the Amish, but that’s only because it believed the Amish were providing an ‘adequate’ education.”³⁵ He notes that New York’s rule requiring private schools to provide instruction in secular subjects “is likely to withstand constitutional challenge ... because it will almost certainly be viewed as necessary to ensure students become full and productive members of a democratic society.” But, he writes, “if the government gets carried away, and moves beyond what is essential ... its authority wanes—and the strength of potential constitutional challenges grow.”

Self-Sufficiency and the Public Dole

The court’s observation of the self-sufficiency of the Amish comes into play here, as yeshivas are criticized for allegedly not producing self-sufficient graduates, as evidenced by their poverty rate and reliance on public support.

But Hasidic families are not alone in availing themselves of the entitlements that they qualify for. In the more than 50 years since the *Yoder* decision, public assistance has increased and participation in SNAP is not so unusual. In 2021, 41.5 million Americans participated in SNAP, an over fourfold increase since 1972, the year of the *Yoder* ruling.³⁶ Further, in New York State, 13.9% of the population lives below the poverty level, including 8.5% of children under 18 years of age.³⁷ In 2018–19, more than 2.7 million New Yorkers³⁸ (13.6% of the population)³⁹ received nutrition assistance. With only 5.5% of the state’s students enrolled in Jewish schools of any type,⁴⁰ the challenge of producing graduates who can be self-sufficient is shared by many schools in all sectors.

Clearly, there are individuals for whom the yeshivas did not provide the outcomes in life that they desired, but one must wonder why more of them have not come forward and why today’s young parents in these communities continue to send their children to these schools. The universal instinct to defend and promote the well-being of one’s children is not abandoned out of blind loyalty to a community’s elders.

Community Bonds as a Social Good

Parents who choose these schools may be motivated partly by a fear of what they see in the culture of the U.S. outside their own communities, and they are simply less inclined to assimilation.

Writing in *National Affairs* just after the onset of Covid-19, economists Abby McCloskey and Aparna Mathur noted that “we’ve learned that without connections to one another or the means to acquire them, life can very quickly become something of a nightmare.”⁴¹ But for some, this was not something brought on merely by the pandemic lockdowns. In fact:

We have been living through the greatest collapse of social capital in American history. The breakdown of families and neighborhoods, the weakening of intermediary institutions, the increasing flight from work, the rise of social sorting, and the decline in face-to-face interactions might appear to be independent trends, but at their core, they are really just different facets of the same phenomenon: individuals disconnecting from their broader communities.

In other words, our social capital—a measure of a community’s connectedness, its web of supportive and trusting relationships, and other social bonds that facilitate all manner of productive pursuits in society, including the marketplace—is dangerously depleted.

In a 1988 article in the *American Journal of Sociology*,⁴² the late eminent sociologist James Coleman described the presence of strong social capital in New York’s “Diamond District”: “In the process of negotiating a sale, a merchant will hand over to another merchant a bag of stones for the latter to examine in private at his leisure, with no formal insurance that the latter will not substitute one or more inferior stones or a past replica. The merchandise may be worth thousands, or hundreds of thousands, of dollars.” Noting that this facilitates a less cumbersome and more efficient market than one would find elsewhere, he observes that “the wholesale diamond market in New York City ... is Jewish, with a high degree of [marriage within the community], living in the same community in Brooklyn, and going to the same synagogues. It is essentially a closed community.”

Every community has failings. But closed communities also create and grow social strength for their members. Sociologists refer to this as bonding social capital, the social capital within a group, or “people like us.”⁴³ It is distinguished from bridging social capital, which is between social groups. The two types of social capital are not in conflict, both produce public goods, and bonding social capital can be the forerunner of bridging social capital.

Must the building of strong community bonds and support in Hasidic communities come at the economic expense of individuals in those communities? A main argument against yeshivas is that they deny their graduates the skills needed to succeed materially. But that criticism avoids the economic benefits that the tight community bonds found in these communities provide to its members.

For example, Frieda Vizel was raised in the Satmar Hasidic community of Williamsburg. She left that community and makes a living conducting walking tours of Hasidic communities in Brooklyn.⁴⁴ She supports improving secular education in the yeshivas but has written about the strong social capital that helps the community thrive: “The Hasidic community is large enough to create employment on the inside.... Over the years, I came to understand why my employers could be successful despite their broken English and terrible habit of showing up to meetings two hours late; because Hasidim trusted each other, and referred each other, regardless of English speaking skills.”⁴⁵ Elsewhere, she has written about how the Hasidim have moved into the real-estate business in Brooklyn and are doing quite well.⁴⁶ Her point is that vibrant local economies can adhere to the many religious requirements of the community.

Another response to the claim of economic neglect came in the *Wall Street Journal*, where Yossi Gestetner argued that the oft-cited poverty rates in some Hasidic communities are at least partially explained by their age distributions, which skew younger than the general population, and the size of their families, which skew larger.⁴⁷ Salaries tend to increase with age; yet larger families (often headed by young parents) have a higher threshold for escaping the poverty designation. Of course, the thresholds go up with family size because it costs more to feed and raise a larger family. But publicly funded tuition tax credits or educational savings accounts can be one way to alleviate the economic stress faced by these families.

Inside Three Boys’ Yeshivas in Brooklyn

In early December 2022, I observed the community up close when I visited three yeshivas in Brooklyn. All three served boys in grades K–12, though I was only able to visit classrooms in grades 1–8 (the high school grades were located on a separate site). One of the schools housed a rabbinic school for college-age students. In two of the schools, I visited classes in talmudic or Judaic studies; in the third, I visited both secular and talmudic classrooms.

Each of these schools differed greatly from the other two. Two of the three schools are “state-registered,” demonstrating a substantially equivalent curriculum. Still, city officials recently contacted the schools to initiate a review of their compliance with the requirements.

One of the “registered” schools offers no secular studies; the other two offer both Judaic and secular studies and participate in the federal Title I program, which involves public money for services provided to eligible students and attendant oversight by the city’s Department of Education.

Student Demographics and Oversight

The students differed in important ways. The school that offers no secular studies is associated with the Chabad movement, and its students come from English-speaking homes.⁴⁸ Teachers and students transitioned seamlessly between fluent English and Hebrew in lessons drawing upon texts written in various forms of Hebrew and Aramaic. The other two schools served students who largely came from Haredi communities and Yiddish-speaking homes.

The differences in the home languages of the students were related to the programming of the schools. The two schools serving native Yiddish speakers need to teach their students English or English as a Second Language. Public support is available for these programs for instruction in English reading (Title I)⁴⁹ and ESL (Title III).⁵⁰ Participation in these programs brings some level of involvement and oversight by the city’s Department of Education—inspectors from DOE’s Title I office were present in one of the schools during my visit. The school with no secular studies could legitimately claim that its students were fluent English speakers.

All three schools provided publicly supported and mandated services to students with special needs. Funding for these services flows directly from the NYC Department of Education to the teacher or the agency providing the service (speech, psychological services, physical and occupational therapy, etc.). All three of the yeshivas had students with special needs and were provided with the needed services with this type of public support.

In all three schools, Judaic and talmudic studies are clearly at the core of their missions. They build on an almost 2,000-year tradition of learning that has sustained Jewish communities since the destruction of the Temple by the Romans and the attendant diaspora. Further, the school administrators I spoke with saw no conflict between religious and secular outcomes, even in the school that offers no secular instruction. An administrator at one school stated that the purpose of his school was to produce graduates who could get good jobs and succeed in society. When a visitor asked about forming young adults who were moral and upstanding, the administrator’s answer was along the lines of “Well, of course, that goes without saying.”

Language and Religious Learning

In all three schools, the talmudic classes were eye-opening to me, a non-Jew. First, the study of Talmud requires the ability to read two languages—Hebrew and Aramaic. The written Talmud is laid out in a particular style.⁵¹ Centered on each page is an unbound “box” of text containing wording from the Mishnah, which often considers disputes among rabbinic scholars, as well as relevant Torah passages. That box is surrounded by commentaries from various rabbis, interpreting the Mishnah and Torah selections. The page also includes cross-references to other related discussions in the Talmud. The language used in these commentaries, Hebrew or Aramaic, depends on the era in which they were written. So even first- or second-graders learn to read passages written in these two languages.

In one school, a young staffer who worked in the curriculum office showed me a spreadsheet on which he was tracking all second-graders’ Hebrew reading comprehension. Each student is tested throughout the year using passages from the Psalms. An administrator explained to me that the form of Hebrew used in Psalms is a bit more complicated than standard Hebrew.

Knowing nothing about Hebrew, I asked for an explanation of the Hebrew language. Is it phonetic or pictorial? Phonetic, the school officials told me. There is an alphabet. Further, there are no written vowels in the Torah or much of written Hebrew; small vocalization points above or below individual letters indicate the vowels in written Hebrew.⁵² Hebrew is also a gendered language, so a young student looks for, among other things, the consonant “root” of the word (words with the same consonants are usually related) and the indication of gender.⁵³ I was amazed that they tested young students on something so complex. But they expect students to be fluent Hebrew readers by the end of grade 1. By contrast, New York public schools typically do not test English reading comprehension until grade 3, based on the notion (sound to me) that young children develop these skills at different rates and that they (particularly boys) need time to mature before the testing will yield valid results.⁵⁴

Citizenship and Responsibility

In the classrooms that I visited, the enthusiasm for and ability in talmudic studies among students in grades 4 and higher were clear. Though teaching styles differed, there was a fair number of calls and responses. In one school, the teacher would pose a brief question or scenario, and the boys would raise their hands—almost all did—and one was chosen to offer a response. In some classes, the students responded as a group. I don’t think I saw one student give a “wrong” answer, though some responses created opportunities for clarification. As typically happens with group responses, a few seemed to be a beat behind the group. In no case did the instruction seem overly teacher-directed; there were no long periods of the teacher lecturing without engaging the students. The teacher guided students in their own learning, while always being available to correct mistakes or misinterpretations.

In the school where the students were fluent English speakers, I was able to follow the discussion of the content more closely. The Talmud is a complex and far-reaching compendium of commentary on interpretation of the “rules” governing almost all aspects of life. Some portions would be considered archaic—the rules governing rites and practices within the Temple destroyed by the Romans. Others speak to religious practice in the home, or on the Sabbath, or holy days.

The discussions that I observed centered on one’s responsibilities to others, essential to building social capital. A person agrees to borrow or rent something from another person—if that something gets lost or harmed, who is responsible? Under what circumstances? Another class was considering the responsibility that one has if he finds something on the street. Another delved into the requirements for a proper divorce. In all cases, the conversation among middle-school-age students struck me as quite nuanced, in-depth and “adult.” It also seemed relevant to modern life, with its emphasis on the relational behavior among members of society. The circumstances underlying the commentary might be different from day-to-day events in the 21st century, but the core principles of relationships and responsibilities seemed universal.

Embracing the Whole-Child Approach

Others will differ, but I cannot argue that the learning I observed—with the discipline required to read complex texts in more than one ancient language and with the focus on an individual’s responsibilities to others and to God—is less valid and rigorous than much of what passes as secular education today. Nor could I argue that the students who come through this type of

schooling are harmed or handicapped because of it. The yeshiva schoolday is longer than that of public school, but there was recess and time for running around with basketballs, footballs, or soccer balls.

The leaders of each of these schools spoke of the development of the whole child. When asked what type of adult they are trying to form, “*mensch*” (a person of integrity and honor) was the common answer.

All three schools worked with families on the burden of tuition. The “asking price” averaged about \$8,000 per child per year, but all three schools made accommodations where needed. Outside help came to each of the schools from alumni and community members. One of the schools is housed in a relatively new building, proudly supported by tens of millions of dollars in donations raised from alumni. Two of the three schools served as community hubs in other ways, with event spaces rented out during nonschool hours for weddings (with a dedicated bridal room) and other festive occasions.

One school went much deeper into the whole-child approach than the others. The administrators described the school as a 24/6 operation, with activities in the evening and on Sunday. They also described various ways in which the school discreetly and respectfully helped parents whose children needed new shoes or articles of clothing.

I was impressed by my visit to one school’s wellness center, staffed by four or five professional counselors and social workers. These men worked with students who were experiencing emotional, mental, or behavioral issues, or who just needed someone to talk with. Regarding their services, they described the importance of getting and maintaining “buy-in” from the boys’ families. All embraced the concept of Social-Emotional Learning (SEL)⁵⁵ but stated that without family support, or acceptance, it won’t work. This seemed a far cry from the introduction of SEL in some public schools, where staff seem to feel an obligation to keep parents out of the loop.⁵⁶

Conclusion: An Uncertain Future for Yeshivas

While media commentary describes the yeshivas formulaically, individual schools vary greatly in their approach to secular studies and their acceptance and use of public funding. For this reason, the solution to whatever ails them will vary across schools.

Some issues—particularly in schools that include no secular instruction by design—seem destined for review by the Supreme Court on religious-liberty grounds. That process will take years to play out, and we cannot predict the composition of the court or its ruling. Other yeshivas may choose to work with the state or city education departments. There may also be room for outside groups to create and distribute model lessons in secular subjects that respect both the purpose of those subjects and the religious traditions of the community members who voluntarily choose these schools.

The Board of Regents should resist the urge to be heavy-handed in enforcing the substantial-equivalence law. Any expectation of activists that these schools exactly mirror the curriculum currently in New York’s public schools will almost certainly be unmet. Further, the value of that public-school curriculum must be viewed in light of the actual outcomes of many public schools, as well as the intrinsic value present in the religious instruction in the yeshivas. Whatever the shortcomings in some yeshivas, they may pale in comparison with the challenges brought on

by the school closings due to Covid-19, the deep learning loss,⁵⁷ and the dramatic decline in the state’s public-school enrollment.⁵⁸ The ongoing low performance of numerous public schools and the state and city’s insufficient response to those concerns also raise legitimate questions about the current focus on yeshivas.⁵⁹

The consequences of the substantial-equivalence rules are uncertain because the state has given the burden of enforcing the mandate to local school districts. The bulk of these schools are in NYC. That means that the city’s overburdened Department of Education has even more responsibility. At this point, it is also unclear how much and what aspects of the local public-school curriculum will be required to consider a school to be substantially equivalent. That uncertainty, as well as the belief that the Regents have targeted a single type of religious schools, will hamper any efforts to mediate the disputes.

Another group will have their say on the yeshivas. As has already happened, parents can bring action against the state and city, arguing that the agencies have failed to meet their legal duty to enforce substantial equivalence. Satisfied parents, by contrast, can bring legal proceedings to argue that the whole of the substantial-equivalence requirement is an infringement of their First Amendment right to practice their religion.

The legal issues are complex, and court decisions will depend upon the specific practices of individual schools and the claims made by parents for or against these practices. Like the Amish, Hasidic communities could argue that they are unique—given their strong social bonds that protect their members from a myriad of social ills and the deeply held religious convictions that underlie what they choose to teach and not teach in their schools. Further, they might argue that graduates of the city and state’s public schools also can end up in poverty and that their schools are being unfairly singled out on this count.

Clearly, some things might be worked out to head off a constitutional crisis. Good teachers are in short supply, and a joint effort between the city’s Department of Education and yeshivas could identify or train qualified teachers to provide important services in religious schools. Other schools might consider expanding secular studies in their summer or Sunday programs, so as not to divert time from religious studies during the school week and year.

Nevertheless, there is a constitutional conflict, and it was evident to me in the school that I visited that offers no secular studies. It is highly functioning. Its graduates appear successful, articulate, and well-educated men, despite years of schooling in an institution that does not check all the curriculum boxes required by the state. I wish that we had more schools in our city like this one. But we don’t know yet what the state will do in the case of schools like this. Nor can we be certain of what the critics of yeshivas will demand. Courts will likely have to decide.

Ultimately, the actions of New York State are based on the belief that the state is better suited than parents to make educational decisions for some groups of youngsters. They seek to apply this belief solely to a popular and growing subgroup of religious schools. It seems that the state’s concern about educational outcomes primarily applies when the schools in question are run by religious groups for the sake of religious instruction, and not when subpar outcomes are found in schools run by a state-appointed monopoly.⁶⁰ That contradiction is a far cry from the values that our country was founded on and that are enshrined in the First Amendment of our Constitution.

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