



March 10, 2019

Law suit Regarding Equivalency of Instruction

Dear New York State Principals and Administrators,

As you may have read or heard, [a lawsuit was filed](#) this past Thursday in New York State Supreme Court by a group of Jewish plaintiffs, challenging the New York State Education Department's recently promulgated substantial equivalency guidelines. It is important for yeshivos across New York State to be aware of this significant development, and the larger context of which the lawsuit is just one part.

The new SED guidelines were published on November 20, 2018. They require local school districts across the state to evaluate all nonpublic schools in their districts for compliance with the legal requirement that they provide an education that is at least "substantially equivalent" to that which is offered in local public schools. Many of the requirements of the guidelines are onerous and inflexible. They understandably provoked a great outcry in the yeshiva community, as they would appear to require radical changes in the seder hayom and educational mission of many if not most of our yeshivos. After efforts to persuade SED to change the guidelines were largely unsuccessful, and with no other short term resolution in sight, the Gedolei Yisroel who have been involved in monitoring this matter came to the reluctant conclusion that the guidelines must be challenged in court.

The plaintiffs in the case are three Jewish organizations (Agudath Israel, Torah Umesorah and PEARLS), five yeshivos (Chaim Berlin, Torah Vodaath, Tiferes Yerushalayim, RJJ and Chasan Sofer), and five parents. They advance several grounds of attack against the new SED guidelines. Without going into detail, the first group of claims allege that the SED exceeded its legal authority in promulgating these guidelines. The complaint further alleges that even if such authority were to exist, the Commissioner failed to abide by the rulemaking process for creating new regulations, and that the guidelines therefore are unenforceable. Finally, the complaint alleges that the guidelines violate the parent plaintiffs' constitutional rights of free exercise of religion, due process and free speech.

Plaintiffs are planning to file a motion for a preliminary injunction in the days ahead, with the goal of stopping the implementation of the new guidelines during the pendency of the litigation. We will report any further developments on this motion after it is ruled on by the court.

Significantly, the Jewish plaintiffs are not the only ones who have filed a lawsuit against the new SED guidelines. Earlier last week, 11 member schools of the New York State Association of Independent Schools filed their complaint, also challenging the SED's legal authority to promulgate the guidelines. Additionally, we have reason to believe that there may yet be at least one other lawsuit in the offing, by another prominent nonpublic school constituency; we should know more in the days ahead. Obviously, the new guidelines are deeply objectionable not only to the Jewish school community, but also to the full spectrum of nonpublic schools across New York State.

In the meantime, we and other nonpublic school groups have been reaching out to members of the New York State Senate and Assembly to alert them to the fact that the entire nonpublic school community is united in firm opposition to the new guidelines, and to work with them in developing new legislation that would resolve the impasse. Indeed, this was the number one issue discussed at last week's Agudath Israel "Albany Day," when a delegation of approximately 60 yeshiva representatives and askanim from across the state spent a full day in meetings with legislators and high ranking officials from the Governor's office. To support these legislative efforts, we are also reaching out to other relevant parties who are potential allies in this battle, including school district leaders who are not pleased with the new oversight responsibility that has been thrust upon them under the new guidelines.

From Agudath Israel's perspective, as determined by the Gedolei Yisroel who guide us, it is the right of every single kehila in Klal Yisroel to establish a system of chinuch that conforms to its mesorah. Roshei Yeshiva, Admorim, Vaadei Hachinuch - they are the ones who should make educational decisions for their mosdos, not government bureaucrats. As we see it, an attack on the educational autonomy of any one yeshiva is an attack on all.

We will of course keep you informed of further developments in the weeks ahead. May we share besoros tovos.



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