

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,;

Petitioners,

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

-against-

LESTER YOUNG JR., as Chancellor of the Board of Regents of
the State of New York; and BETTY A. ROSA, as Commissioner of
the New York State Education Department,

Respondents.

Index No. 907665-22

AFFIDAVIT OF AWI FEDERGRUEN

1. The Commissioner of the State Education Department relied upon a report released by YAFFED in her recent submission to this Court and attached a copy of the report for the Court's consideration. The purpose of this declaration is to address the methodologies utilized to compile the YAFFED report, and the validity of the report's suggested findings.

Educational and Professional Background

2. I am the Charles E. Exley Professor and Chair of the Decision Risk and Operation Division of the Graduate School of Business of Columbia University. I joined the faculty of Columbia University in 1979 after receiving my doctorate in Operations Research at the University of Amsterdam in the Netherlands. From 2002-2007, I served as the Academic Dean of the Columbia Business School. I am an expert in various areas of quantitative methodology, in particular the areas of applied probability and stochastic models, applied primarily to supply chain management, marketing and financial models. I have authored some 150 articles in the premier journals of my field and have served as Editor In Chief, Departmental Editor and Associate Editor of several of the field's flagship journals.

The YAFFED Report

3. In 2017, YAFFED released a report entitled Non-Equivalent: The State Of Education In New York City's Hasidic Yeshivas. The State Education Commissioner has referenced this report in the affidavit she submitted in this case and attached a copy of the report as an exhibit. The Commissioner's inclusion of the report and her reliance on it suggests that it provides a basis and justification for the regulations recently enacted by the State Education Department. A review of the report establishes that it does no such thing.

4. Based on its title and on the fact that the State Education Commissioner cited the report in this litigation, one would expect the report to provide substantiation for its claims about Yeshiva schools. It does not do that. Instead, the report meanders among various topics that are at best tangentially related to those claims.

5. The report contains three sections: (i) a "survey" to assess the level of "dissatisfaction" with respect to the secular studies at various yeshivas; (ii) the income

distribution found among members of the Hasidic community; and (iii) a discussion of various state and federal funding sources available to Hasidic Yeshivas

6. As explained more fully below, the report suffers from several fatal methodological infirmities, devotes a majority of its analysis to topics that bear no relation to the issue of Yeshiva education and education standards, and utterly fails to substantiate the claim that Yeshivas do not comply with those standards.

7. In response to an earlier iteration of my criticism of the YAFFED report's methodological infirmities, a lawyer for YAFFED acknowledged to a federal court in Brooklyn that the YAFFED report "never claims to be a scientific survey."

8. Surveys, studies and reports that do not conform to basic scientific methods should not be relied upon by the State Education Commissioner. The YAFFED report should certainly not be relied upon by this or any other court as it has no probative value whatsoever.

The YAFFED Survey

9. The report drew its conclusions about Yeshiva education from a survey that YAFFED conducted to assess the level of "dissatisfaction" among alumni and parents with respect to the secular studies education at Hasidic Yeshivas. The results of this survey are what YAFFED relies upon for its negative conclusions about Yeshiva education.

10. However, a review of the "methods" section of the report (on page 74) reveals that (i) the survey "was distributed through social media, groups of yeshiva graduates and personal networks;" (ii) garnered no more than 116 responses; (iii) of which only 44 had actually

attended Hasidic secondary schools¹ at a Yeshiva in New York City. The report does not disclose how many distinct schools these respondents attended, but it appears to be somewhere between 22 (see the discussion at pages 33 and 36 of the curriculum at 22 schools) and 39 (the number of schools that YAFFED has identified in its public criticism of Yeshiva education.

11. That means that YAFFED obtained two or fewer relevant responses per educational institution. This is a ridiculously low response level, both in absolute and relative terms. Especially since YAFFED itself concedes that there is a broad spectrum of curricular practices across the various Yeshivas in New York, the number of responses per institution is the relevant response measure.

12. For this reason alone, it would be irresponsible for anyone to attribute any relevance to these survey responses that serve as the backbone of the YAFFED report.

13. Best practices for survey sampling suggest that the survey sample be large enough to provide representative information about a population (Scheaffer, Mendenhall, & Ott, 2006). Here, the Yeshivas about which YAFFED seeks to draw conclusions educate approximately 57,000 students, annually, and therefore should be expected to have tens or hundreds of thousands of alumni. A self-selected "group" of responses from one or two of those alumni per institution is clearly insufficient to be representative or to permit any conclusions to be drawn.

14. It is also perplexing that a report used to draw conclusions about New York City Yeshivas was based on a survey in which the majority of the (small number of) respondents had not attended a Hasidic school in New York City, even at the elementary school level.

¹ Page 35 of the YAFFED report states "In high school, only 6 of the 44 New York City high school-level yeshiva students and graduates who responded to Yaffed's survey..."

15. But the failures of the report do not end there. The surveyed “sample” appears to have been “constructed” in a haphazard and radically biased manner. There is no description of how the “yeshiva graduates” were selected. The “personal networks” are equally ill described but its designation suggests that the leaders of the organization solicited their “friends” on Facebook and other social networks. It is not much of a surprise that the Facebook friends of YAFFED and its executive director share their worldview, and dislike Yeshiva education.

16. In other words, in addition to the size of the sample, it is crucial that the sampling procedure be designed to avoid biases. In a valid and professionally conducted study, a sample would be drawn randomly from the relevant populations, rather than the investigators seeking out specific individuals. The study should also correct for built in biases, for example overrepresentation by segments with extremely negative views who are far more motivated to respond than those with a neutral or positive view on the subject matter.

17. In fact, the bias of an online “survey” made available via social media is even worse in this instance, because, as the report itself acknowledges (p. 53) the Hasidic community does not actively participate online and in social media to the degree seen in other communities.

18. By distributing the survey through the narrow channel of its social networks, YAFFED oversampled those likely to agree with its worldview, and excluded the vast majority of Hasidic Yeshiva graduates and alumni. This is a classic coverage error, where the sample does not represent the population as a whole (Hill, Dean, & Murphy, 2014).

19. Internet surveys suffer from many disadvantages, in particular low response rates, and a lack of control of the environment and associated (intended or) unintended biases, see for example Table 7.1 in Malhotra (2012). A responsibly designed survey would reach out to the full alumni population of thousands of alumni in each school or a reasonably sized sample thereof.

20. Finally, the YAFFED report fails to disclose what questions were included in the survey, and whether they were forced-choice questions (e.g. yes/no), likert questions (i.e., respondents are asked to rate an item on a predefined scale), or open-ended questions allowing the investigators to draw fully subjective conclusions from the narratives. Beyond the number of respondents, it would be pertinent to know basic demographics, such as whether those who responded were recent Yeshiva graduates or had attended Yeshiva a decade or more ago.

The YAFFED Complaint

21. The Affidavit submitted by the State Education Commissioner also references a complaint letter submitted by YAFFED in 2015. A review of that letter reveals that it provides no support of justification for the regulations recently adopted and challenged in this case.

22. The letter begins with the assertion that its signatories “are parents of current students, former students and former teachers at the Yeshivas on the attached list.” There were 39 yeshivas named in the complaint letter.

23. Even that statement was false. In an August 15, 2018 letter to the State Education Department, the New York City Schools Chancellor states that the Department of Education interviewed the complainants and they only had “information about 11 of the schools named in the complaint letter.” That means that the complainants had no first-hand information or experience about more than two-thirds of the schools named in the complaint. That alone is a disqualifying defect – both as a complaint that needs to be taken seriously, and as support for the sweeping and far-reaching regulations that were recently enacted.

24. Moreover, the letter contained only a single, undifferentiated paragraph about each of the schools listed, and only a single, undifferentiated sentence that can be said to contain an allegation: that “generally speaking, at the listed Yeshivas, English and mathematics are

taught . . . for an average combined time of only 90 minutes [a day] and only four days a week.

Other secular subjects are not taught at all.”

25. Of course, the modifier “generally speaking” undermines the suggestion that the listed schools are monolithic or problematic. And the allegation that “other subjects are not taught at all” was demonstrably false and easily disproven.

The Income Distribution Within the Hasidic Community

26. The YAFFED report repeatedly mentions that there is poverty among the Hasidic community, presumably to convey that the Hasidic population is poorly educated and therefore ill prepared to earn an adequate income in the United States or New York City economy. For example, in its Executive Summary on page 6, the authors state that “43% of Hasidic households are poor.” The same statistic is one of five highlighted in the population profile on page 43.

27. Differences in educational levels are, of course, an explanatory variable in characterizing differences in income distributions across different population segments. However, it is only one of many. As an example, in the United States, only 63% of the eligible population is engaged in the labor force or runs its own business, see e.g. Statista (2017). This percentage prevails even in the current economy. Many individuals choose to stay outside the labor force or to engage in part time jobs, for a large variety of reasons, even though they have the skills and training to be gainfully employed, on a full time basis. This consideration applies, a fortiori, to the Hasidic community where many assign the highest priority to engaging in Jewish studies, tending to the religious needs of their community and to raising their (indeed, typically, very large) families. For many, these values take precedence over the pursuit of high or even merely comfortable income levels.

28. However, even to the extent that income distributions *are* used as a proxy for the adequacy of educational systems, it is **absolute** income levels that should be considered, rather than how these levels compare with federally specified poverty levels. The latter increase rapidly with household sizes, and, as stated repeatedly in the YAFFED report, itself, household sizes are very large in the Hasidic community. For example, the 2018 Federal Poverty Guidelines set the poverty threshold income at \$12000 for single individuals, and in excess of \$55,000 for families with 9 children, see, for example, FAMILIESUSA(2018)

29. The US Census Bureau reports on income distributions in the 59 Community Board Districts in New York City. Its source is the 2010-2014 American Community Survey 5-Year Estimates > People :Income & Earnings: income/Earnings.

30. What this data demonstrates is that the Williamsburg and Borough Park Districts -- where the vast majority of New York City Hasidic families reside -- rank in the top or second quartile of the 59 districts, respectively.

31. More specifically, Williamsburg had in 2018 the 14th largest percentage of males with an annual income in excess of \$100,000, and Borough Park had the 27th largest in this ranking. The two districts assume very similar positions when ranking the districts by the percentage of males with an annual income in excess of \$ 50,000. The percentages are computed with respect to the total population of males, 18 years or older.

32. In particular, Williamsburg has a mixed population which is only partially Haredi or Hasidic. Zip code based statistics therefore provide a distorted picture. A direct, independent source that compares the income distributions of different segments of the Jewish population (nationwide) with each other, and with the general US income distribution, is provided by the Pew Research Center in its Surveys of U.S. Jews. The last two surveys were conducted in 2013

and 2020 respectively, but only the former separates out the income distribution of the Haredi (referred to ultraorthodox) segment. (The Haredi population overwhelmingly (89%) resides in the Northeast corner of the country, and almost exclusively in New York and New Jersey. See <https://www.pewresearch.org/religion/2015/08/26/a-portrait-of-american-orthodox-jews/>

33. The Pew Survey shows that in 2013 57 % of Haredi Jewish households earned more than \$50000 (\$65000 in 2022 \$) compared to just 45% for the general US population. Just about a quarter of Haredi households (24%) earned more than \$150000 (\$195000 in 2022 \$) compared to just 8% for the general Us population. The income distribution is remarkably close to that of the nonreligious population in the United States.

34. These rankings are all the more remarkable when taking into consideration that in the Hasidic community (a) young male adults typically wait till their late twenties or beyond before starting their professional careers, this to engage in full time Jewish studies. This segment of the population has zero or close to zero income from wages, salaries or business profits; and (b) there are very high birthrates, and so the age bracket between 18 and 30 represents a very large percentage of the total population of individuals 18 years and older.

35. To summarize my conclusion: the income distributions in Williamsburg and Borough Park, far from signaling inadequate educational preparation, compare favorably with the majority of New York City community board districts.

Government Funding Available to Yeshivas

36. The YAFFED report devotes 15 pages to a discussion of various federal and state funding available to Yeshivas. It is entirely unclear how this information sheds any light on the question whether the Yeshiva curricula comply with New York State standards, the stated

concern of the report. The report's Executive Summary characterizes the government funding as "exorbitant sums of public funding despite their private status."

37. The impression conveyed by this section of the report is that it is meant to paint a picture of a population that is a burden on taxpayers. Once again, the report's findings are not supported by the discussion on which it relies, leading to a fundamentally misleading conclusion.

38. Title I–III funding is identified as, by far, the single largest source of federal funding available to yeshivas. The report asserts that Hasidic yeshivas "receive tens of millions of these Federal funds."

39. Yet even if accepted at face value, this represents an average of several hundred dollars per Yeshiva student in New York. (The report puts the total Titles I - III funding for all non-public schools in New York City at \$127 million. But there are 110,000 Yeshiva students in New York City, as compared to a total nonpublic school enrollment of more than 250,000.).

40. Contrast this with the cost for each public school student in New York. Data obtained from the U.S. Census Bureau reveals that New York State public schools received a total of \$25,730 per student from federal, state and local governments in the 2016 fiscal year. See Table I1 in the "2016 Annual Survey of School System Finances," conducted by the United States Census Bureau.

41. The data for the most recent school year demonstrates the per-pupil cost in the New York City public schools has risen dramatically, to well over \$30,000 annually.

42. Parents who enroll their children in religious schools are subject to the same school and other taxes as families that utilize the public schools, and do not receive any tax benefit (neither a credit nor a deduction) for the religious school tuition they pay. This means

that state and local government, and hence the taxpayers, achieve a huge savings as a result of New York's privately funded Yeshiva system.

43. Two-thirds of the State's Yeshiva enrollment, or 110,000 students, is in New York City, while the remaining third, or more than 55,000 students, are largely enrolled in schools in the surrounding suburbs of Rockland and Orange County and Long Island and Westchester. Using a conservative estimate of the cost to educate public school students in those districts leads to the conclusion that the Yeshiva system saves New York taxpayers more than \$5 billion annually, and more than \$50 billion dollars over a decade.

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 19th day of January 2023, at Queens New York.



AWI FEDERGRUEN

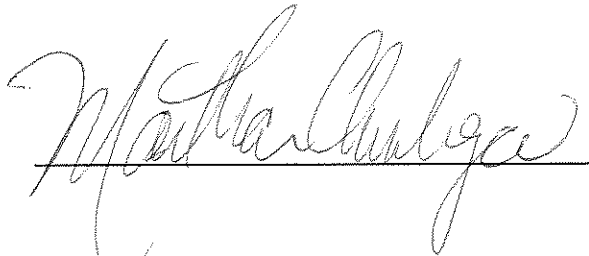
Acknowledgement Form

State of New York)

)ss.:

County of New York)

On the 19 day of January in the year 2023, before me, the undersigned notary public, personally appeared AWI FEDERGRUEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 Notary Public

MARTHA CHIRIBOGA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CH6409311
Qualified in New York County
My Commission Expires 09-28-2024