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January 13, 2025

**Via E-mail: OCR@ed.gov; OCR.NewYork@ed.gov
Original to Follow by U.S. Mail**

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To Whom it May Concern:

Bobover Yeshiva Bnei Zion, Oholei Torah, United Talmudical Academy, and Yeshiva & Mesivta Arugas Habosem operate well-established and highly-regarded yeshiva elementary schools in Brooklyn, New York. Each has been and remains subject to discrimination by the New York State Education Department and New York City Department of Education.

The discriminatory conduct pervades every aspect of their schools. New York categorically refuses to credit any instruction that is a part of their Jewish Studies curriculum, despite its academic value and content. It prohibits the Yeshivas from teaching required classes with instruction and texts in a foreign language, even though such texts and instruction are central to their heritage and public schools are encouraged to provide foreign language instruction. It imposes a government-approved reading list on the schools, for the express purpose of exposing their students "to a range of materials that their parents and schools wouldn't otherwise permit them to read." It interferes in the process by which the Yeshivas hire their faculty. And it refuses to accommodate their values as it relates to the gender profile of their classrooms.

Taken together, these discriminatory practices would strip the Yeshivas of their essential Jewish character. If they can't devote sufficient time to Jewish Studies with instruction in their original language that utilizes primary texts taught by a faculty hand-picked by them to model behavior in conformity with their values and heritage while maintaining the autonomy and authority to select which material students read in a classroom whose composition reflects their principles—then they are no longer Jewish schools.

In an era when the gulf between society's values and those promoted by Jewish schools is getting wider and tolerance for differences is getting narrower, only the federal government can ensure that the Yeshivas can pursue their missions free from local government interference.

The Office of Civil Rights should exercise its oversight over these New York agencies that receive billions of dollars in federal funds annually by thoroughly investigating their discriminatory practices and remediating their discriminatory conduct.

I. INTRODUCTION

Complainants are four Yeshivas that have endured, and continue to endure, targeted and discriminatory treatment at the hands of the New York State Education Department and New York City Department of Education. They have been the subject of troubling and punitive action by New York that threatens their missions and jeopardizes their ability to educate students in the faith and tradition chosen by their parents.

New York's actions seem calculated to make it too difficult for the Yeshivas to fulfill their educational missions and to sustain their heritage. But New York is badly mistaken if it thinks Complainants will cave to the pressure and standardize and secularize their schools.

The Orthodox and Chasidic Jewish community in general, and its schools in particular, have long resisted the "requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards." *Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972).

Since New York adopted its Compulsory Education Law more than 125 years ago, the Jewish community has operated schools there. Until very recently, they did so without tension or controversy. Parents were free to send their children to Jewish schools. All the State required of parents was that the instruction their children received outside of the public school was "at least substantially equivalent to the instruction given . . . at the public schools"—a standard that focused on learning objectives, not specific curricular content. See Education Law § 3204(2)(i). Indeed, the State Education Department's published guidance until just a few years ago acknowledged that New York "has no direct authority over private schools."

During those many years, Jewish schools, including the Complainants, were unimpeded in carrying out their missions. Unfortunately, New York is no longer treating Jewish schools with the fairness, respect, and independence that they are due under the law.

In 2022, New York adopted regulations that require private schools to undergo "substantial equivalency" reviews. Those reviews are now being used as cover to discriminate against Complainants. Specifically, New York is engaged in the following unlawful conduct:

1. Targeting Jewish Studies curricula for disfavored and discriminatory treatment;
2. Prohibiting Yeshivas from providing dual-language instruction;
3. Forcing Yeshivas to require students to read texts from reading lists it approves;
4. Interfering with Yeshivas' constitutional autonomy to select their faculty;
5. Refusing to respect cultural and religious classroom norms of the Yeshivas.

To be clear, Complainants are not challenging the 2022 regulations here. None of New York's discriminatory practices and conduct is condoned by those regulations, let alone required by them. Rather, New York is using the leverage it thinks it has as a result of conducting those reviews to impose its secular views on these Jewish schools. When the nanny state and the secular state converge, it is no surprise that government finds no value in Jewish education and no regard for the educational choices that parents make for their children.

New York has no right to hamper Jewish education or to insist on secularizing and standardizing Jewish schools. This case presents a paradigmatic example of the discrimination that the Office of Civil Rights exists to protect against. Complainants respectfully request that the Office take action against New York to immediately cease the ongoing discriminatory policies, practices, and conduct that Complainants and other yeshivas are being targeted with.

II. BACKGROUND

By the end of World War II, there were approximately 25 yeshivas in New York with a combined enrollment of about 5000 students. Starting in 1945, the Jewish community set about to rebuild that which was destroyed in the Holocaust. They succeeded in ways that were unimaginable then. Today, there are nearly 500 Jewish elementary and high schools in New York educating nearly 180,000 students.¹

The success of the Jewish educational system in New York is not the result of a growing Jewish community but rather the reason for its growth. As Lord Rabbi Jonathan Sacks explained, “the Egyptians build pyramids, the Greeks built temples, the Romans built amphitheaters. Jews built schools. They knew that to defend a country, you need an army, but to defend a civilization, you need education.”

Yeshiva education generally has several common features. Most prominent among them is that most offer a dual curriculum, with Jewish Studies classes taught in the morning and secular studies in the afternoon. See *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 344-45 (2d Cir. 2007). But regardless of subject or session, “classes are taught so that religious and Judaic concepts are reinforced.” *Id.*

The integration of the Jewish faith, texts and customs throughout the entirety of the learning process is precisely why parents choose yeshiva education for their children. They take seriously the Biblical command that “You shall place these words of Mine upon your heart and your soul . . . and you shall teach them to your children to speak in them.” Deuteronomy 11:18-19; see *Westchester Day School*, 504 F.3d at 345 (“Orthodox Jews believe it is the parents’ duty to teach the Torah to their children. Since most Orthodox parents lack the time to fulfill this obligation fully, they seek out a [Jewish] school.”).

Until recently, Jewish schools and New York’s educational bureaucracy coexisted harmoniously. New York’s Compulsory Education law was not understood or enforced in a way that prevented Jewish schools from providing an education that was consistent with the Jewish mission and heritage. The law expressly provides that children “may attend [instruction] at a public school” or they may attend “elsewhere,” Education Law § 3204(1), as long as the instruction they received was “at least substantially equivalent to the instruction given . . . at the public schools.” Education Law § 3204(2)(i).

The statutory “substantially equivalent” requirement is a flexible standard. It does not “mandat[e] adherence to a detailed and uniform curriculum.” *Blackwelder v. Safnauer*, 689 F. Supp. 106, 123 (N.D.N.Y. 1988). It “afford[s] wide leeway” by “set[ting] out general educational goals for students.” *Id.*

As New York’s State Department of Education itself has acknowledged, “religious and independent schools often have different settings and . . . instructional methods from public schools” and those “traditions and beliefs—religious or otherwise—will drive the curriculum and will be integrated into the delivery of the learning standards.” That is consistent with its recognition that “the NYS Learning Standards are not a curriculum” and that they “do[] not require, recommend, endorse, or advise on curriculum.”²

¹ See *2023-2024 Nonpublic Enrollment by Race and Ethnicity*, Information and Reporting Services, <https://www.p12.nysed.gov/irs/statistics/nonpublic/>

² <https://www.nysed.gov/standards-instruction/about-p-12-learning-standards>

Despite this, New York has recently been targeting yeshiva education and yeshiva curricula. In 2022, the State Education Department adopted regulations that, among other things require parochial and other private schools to undergo and “pass” regular substantial equivalency reviews. While these regulations impose requirements that are not contemplated by New York’s Education Law, Complainants are not challenging those regulations here.³

Rather, the subject of this Complaint is New York’s discriminatory conduct and practices against Complainant (and other) Yeshivas. New York seems to believe that these reviews give it the leverage to push the Yeshivas to deemphasize their Jewish Studies and to standardize and secularize their curricula. To achieve that, New York has imposed obligations that are neither provided for by the regulations nor permitted by law. That is the conduct that is the subject of this Complaint. In other words, under the guise of enforcing the 2022 regulations, New York has adopted policies and practices that are subjecting the Complainants to an ongoing course of unlawful discrimination.

III. NEW YORK’S LEGAL OBLIGATIONS

When the New York State Education Department and New York City Department of Education interact with Complainants, they must do so consistent with federal law. Under both the United States Constitution and federal anti-discrimination law, Jewish and other religious institutions are protected from state laws that “impose special disabilities on the basis of religious status” or national origin. See *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (cleaned up); 42 U.S.C. § 2000d. Put simply, federal law “protects religious observers against unequal treatment.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017); see also *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16 (1947) (No State may “exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith”); *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 449 (1988).

Parents also have a fundamental right “to direct the rearing and education of their children, free from any general power of the State to standardize children.” *Zorach v. Clauson*, 303 N.Y. 161, 173 (1951), *aff’d*, 343 U.S. 306 (1952) (citing *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925)). That right has been described as a “fundamental theory of liberty upon which all governments in this Union repose.” *Pierce*, 268 U.S. at 534-35.

New York has no power to make children “the mere creature of the state”—it is parents who have “the right” and “duty” to direct the manner of their children’s education. *Id.* at 535. That right is especially protected when it comes to religious instruction. *Yoder*, 406 U.S. at 233. A state has no legitimate interest in barring parents from providing for the private or religious instruction of their children. New York, like all states, must respect the right of parents “to guide the religious future and education of their children.” *Id.*

New York also cannot interfere with the right of religious educational institutions to decide matters “of faith and doctrine.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). That includes “the authority to select, supervise, and if necessary, remove

³ Those regulations have been challenged in state court. See New York Court of Appeals Case No. APL-2024-00125.”

[instructors] without interference by secular authorities.” *Id.* Under the First Amendment, “any attempt by government to dictate or even to influence such matters” is strictly prohibited. *Id.*

The New York State Education Department and New York City Department of Education also have basic non-discrimination obligations under Title VI of the Civil Rights Act of 1964. That law and its implementing regulation provide that “[n]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which [Title VI] applies.” 34 C.F.R. § 100.3. Title VI’s protection from national origin discrimination extends to persons who experience discrimination based on their actual or perceived shared ancestry or ethnic characteristics, such as persons of Jewish, Muslim, Arab, or South Asian descent.

Both the New York State Education Department and New York City Department of Education receive federal financial assistance and so are subject to Title VI’s requirements.⁴ The Office of Civil Rights has jurisdiction over this matter, which involves national origin and ethnic discrimination. As OCR has explained:

Groups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith. Similarly, the existence of facts indicative of religious discrimination does not divest OCR of jurisdiction to investigate and remedy allegations of race or ethnic discrimination. OCR will exercise its jurisdiction to enforce the Title VI prohibition against national origin discrimination, regardless of whether the groups targeted for discrimination also exhibit religious characteristics. Thus, for example, OCR aggressively investigates alleged race or ethnic harassment against Muslim, Sikh and Jewish students.⁵

More recently, Executive Order 13899 directed OCR and all federal agencies to vigorously enforce Title VI against prohibited forms of discrimination rooted in antisemitism. The Executive Order reaffirmed the federal government’s long-standing position that antisemitism and discrimination against the Jewish people violates Title VI.

IV. THE COMPLAINANTS

Complainants are four yeshivas that have been providing instruction to thousands of children in New York City for at least seventy years. Each of the Yeshivas has a rich history and exists to preserve the culture and traditions of its community. Each also has an educational mission that seeks to equip its students with the virtue, knowledge, and skills needed to be productive and contributing members of society. Here is a little more about each one:

Bobover Yeshiva Bnei Zion (Bobover Yeshiva): Bobover Yeshiva is a Jewish elementary school located in Brooklyn, New York. It was founded in 1947 by Rabbi Shlomo Halberstam, the Bobover Rebbe, who was among the small remnant of Bobover chasidim who

⁴ <https://www.nysed.gov/federal-education-covid-response-funding#:~:text=Since%20March%202020%2C%20New%20York,Federal%20Education%20COVID%20Response%20Funding>; <https://comptroller.nyc.gov/reports/nycs-federal-funding-outlook-under-trump/> (For fiscal year 2025, the City’s Department of Education expects to receive \$1,965,000,000 in non-emergency federal financial assistance.)

⁵ U.S. Dep’t of Education, Office for Civil Rights, Office of the Assistant Secretary, “Dear Colleague Letter,” Sep. 13, 2004, available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

survived the Holocaust. The Yeshiva was founded as a vital first step to reestablishing a Bobover Chasidic community by providing an elementary education for their children. Today, it serves a thriving community that is tens of thousands strong, providing a religious and secular education to nearly 1,400 K-8 students that reflects and extends the Bobover identity to new generations. Bobover Yeshiva's mission is to instill a love of learning in every child. The Bobover Yeshiva remains essential to continuing the Bobover chasidim's way of life.

Oholei Torah: Oholei Torah was founded in 1956 and is the flagship elementary school of the Chabad Lubavitch chasidic movement. Its mission and curriculum were overseen by Rabbi Menachem Schneerson, known as the Rebbe. Its founders and early parents were among those who were severely sanctioned and punished in Czarist Russia for insisting on making Jewish education available to Jewish children. Its goal is to imbue in its students a love of learning and a joyful approach to living a rich, religious life. Consistent with the Chabad Lubavitch mission, students are taught to love and assume responsibility for every Jew and all humanity across the globe. The Chabad Lubavitch movement places an emphasis on scholarship, intellectual understanding, and contemplation: Chabad is an acronym for Chochmah, Binah, Da'as, which mean Wisdom, Understanding, and Knowledge.

United Talmudical Academy (UTA): UTA is the educational arm of the Satmar chasidic community. It was established in 1949 under the leadership of Rabbi Joel Teitelbaum, the Satmar Rebbe who reestablished the Satmar community in New York after it was decimated in the Holocaust. Today, UTA has thousands of elementary school students in Williamsburg, Brooklyn. Its dual curriculum emphasizes the importance of developing within each student the qualities of gratitude, optimism, and creativity, and the skills necessary to succeed in the 21st Century. UTA's mission is to collaborate with its parent body to instill in its students strong Jewish values leading to personal growth and moral development.

Yeshiva & Mesivta Arugas Habosem (YMAH): YMAH's roots go back to the early 1940s. Established by Rabbi Levi Yitzchok Greenwald, the Tzelemer Rebbe, YMAH's mission includes to transmit a distinctive approach to a life defined by the traditions of the chassidic community that infuses students with a love of learning and a respect for authority and builds character and prepares students for living a successful chassidic life in contemporary society.

V. STATEMENT OF SUPPORTING FACTS

It is impossible to overstate the centrality of yeshivas and the education they provide to the growth and vitality of Jewish life in the United States. After the Holocaust, the American Jewish community set out to rebuild that which had been destroyed in Europe. That effort placed a primary focus on the creation of a network of Jewish schools in New York and across the United States. Today, there are nearly 500 Jewish elementary and high schools in New York educating approximately 180,000 students. This dramatic increase is not a result of the growth of New York's Orthodox community, but rather the catalyst for that growth.

For years, the Complainant Yeshivas were able to educate students without controversy. New York respected their role and the rights of parents to choose parochial education for their children. And the results speak for themselves.

Thousands of their alumni have established careers and businesses in New York and have married and gone on to raise their families in New York. Others have become leaders in the

Jewish community, in New York and across the United States. They lead educational and social service institutions, and they are essential to the continuity of Jewish life.

By all measures, they have led successful lives and are a credit to their community—not only the Jewish community but the New York community as a whole. Now, they are forced to bring this Complaint after suffering increasing discrimination for their Jewish traditions and practices.

As explained, New York has violated federal anti-discrimination law in five ways.

A. New York is Discriminatorily Refusing to Credit the Instruction in Jewish Studies Classes Even Though it Satisfies the New York Learning Standards.

Jewish Studies are central to the Complainants' cultural heritage and educational mission. Parents send their children to these Yeshivas to foster community, deepen understanding of their traditions and heritage, and receive an education from a distinctly Jewish perspective. This is what occurs during Jewish Studies classes. The instruction students receive in Jewish Studies courses comports with the learning standards across subjects. It integrates and satisfies key learning objectives from the required subjects with Jewish texts, history, and culture. It is intellectually rigorous, and it instills and preserves culturally important values and traditions.

But New York wholly discredits that instruction. It has advised Complainants that their Jewish Studies classes do not count at all toward satisfying New York's educational requirements. Yet there is nothing in New York's Education Law or regulations that permits this result, let alone compels it. Instead, New York is using its implementation of these regulations as a lever to force the Complainant Yeshivas to deemphasize their Jewish Studies classes and to secularize and standardize their instruction. That is something that none of these Yeshivas can or will abide.

By categorically refusing to consider Jewish Studies instruction—a policy that continues to be in effect—New York is discriminating against all Complainant Yeshivas, each of which offers Jewish Studies classes for at least the first several hours of the school day. The impact is most acutely felt by Oholei Torah, which has since its inception taught all classes through a Jewish-themed curriculum.

The impact of New York's discriminatory view of Jewish Studies is more than just advisory. It has real world implications. That is because the 2022 regulations require Jewish (and other private) schools to obtain a positive determination from New York in order to operate as a school. The Complainant schools have already been notified by New York that their current emphasis on Jewish Studies is an obstacle to obtaining the positive determination. They have received negative preliminary determinations, and New York's ongoing discriminatory practices continue to hamper the Yeshivas' ability to fulfill their mission.

As more fully explained below, New York's enforcement actions contradict its own guidance and long-held positions and unlawfully discriminate against the Yeshivas:

- New York's Compulsory Education Law does not dictate a specific curriculum or mandate specific instructional content for any school—public or private. *Blackwelder v. Safnauer*, 689 F. Supp. 106, 123 (N.D.N.Y. 1988) (New York law does not prescribe “the scope and depth of instruction in a particular” subject or mandate “adherence to a detailed and uniform curriculum.”). As noted above, the “New York State Education Department does not require, recommend, endorse,

or advise on curriculum.” Instead, private “schools choose and/or develop curricula, curricular materials, and instruction to meet the individual needs of their students, and to support all students in gaining the skills and knowledge articulated in the NYS Learning Standards.”⁶

- Those learning standards are referred to as Next Generation Learning Standards or New York Learning Standards. They are standards that cover skills and knowledge (outcomes) rather than specific content or curriculum (inputs). They are designed to ensure students achieve benchmarks in particular skills at various grades in elementary school.
- The learning standards do not require instruction in specific content but instead focus on skills-based competencies, recognizing that instruction should be differentiated based on student needs and learning styles.
- Consistent with this flexible approach focused on learning standards, substantial equivalency has always accommodated instruction by “diverse religious groups.” *Blackwelder*, 689 F. Supp. at 135. Nothing in New York law mandates that the core subjects be taught in separate “secular” classes. Nothing in New York law prohibits teaching those subjects in the context of Jewish Studies. *Id.* at 128-30.
- Indeed, before New York decided to target and discriminate against yeshivas, it recognized that such schools “have intellectually rigorous religious education programs that develop close reading, textual analysis, and other cognitive skills,” and accordingly, such “aspects of the school’s program may be considered and included in the overall review as demonstrating that instructional requirements are met through the entire curriculum.”⁷
- However, on November 14, 2024, the State Education Department issued a set of Frequently Asked Questions, or FAQs, that were meant to give guidance to local school authorities such as the NYC Department of Education evaluating Jewish schools. Those FAQs display a discriminatory approach toward Jewish Studies.
- For example, in FAQ 53, the State Education Department explains that “the purview of the LSA is only to review the **secular components** of an academic program.”⁸ The reference to “secular” components disqualifies the Complainant Yeshivas from having their Jewish Studies instruction credited.
- As if that weren’t enough, the FAQ continues by noting that “SED is unaware of any religious texts which alone or in combination would provide sufficient depth and breadth across grade levels to demonstrate substantial equivalence to the instruction in public schools in the required courses of study.”⁹

⁶ <https://www.nysed.gov/standards-instruction/about-p-12-learning-standards>

⁷ *Id.*

⁸ <https://www.nysed.gov/sites/default/files/programs/nonpublic-schools/2024-11-14-se-faq.pdf>. (emphasis added).

⁹ *Id.*

- New York’s discriminatory dismissal of Jewish Studies is also entirely contrary to the way it handles the educational approach of other cultures. In 2018, New York adopted a “Culturally Responsive-Sustaining Education Framework” that is intended “to assist in the promotion and perpetuation of cultures, languages and ways of knowing that have been devalued, suppressed, and imperiled by years of educational, social, political, economic neglect and other forms of oppression.”¹⁰
- According to New York, culturally responsive-sustaining education “is grounded in a cultural view of learning and human development in which multiple expressions of diversity are recognized and regarded as assets for teaching and learning.”¹¹
- Putting that framework into action, the City’s own schools teach courses that count culture, tradition, and national heritage instruction toward core learning requirements. For example, in 2024, New York City public schools launched “Black Studies as the Study of the World: A PK-12 Black Studies Curriculum for New York City Public Schools.” That new curriculum is designed to provide students with a learning experience that “is enriched by the tapestry of cultural histories and perspectives” by infusing lessons with “the experiences of peoples of African descent in the U.S. and throughout the world.”¹²
- In the curriculum, fifth graders will study the Haitian general Toussaint L’Ouverture for social studies credit and sixth graders will study Egyptian Nile boats for science credit. The City also just announced a Latine Studies curriculum that “will immerse students in a curriculum centered on Latinidad cultures and histories.”¹³ According to one of the curriculum’s key collaborators, the “long-struggled-for curriculum...will dynamically encompass the varied history, culture, and experiences of Latinidad.”¹⁴
- What all of that demonstrates is that the substantial equivalency requirement is guided by learning *standards*—it does not require, and has never required, instruction in specific *content*.
- The Jewish Studies courses the Yeshivas provide their students are no less capable of meeting New York’s educational requirements than the non-Jewish curricular offerings of New York City schools and City-sponsored and promoted educational programs.
- For example, lower elementary school Jewish Studies classes typically include both in-text learning of biblical passages in the original text and an oral comprehension component. These lessons teach foundational skills and

¹⁰ <https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>

¹¹ <https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>

¹² <https://www.weteachnyc.org/resources/resource/black-studies-as-the-study-of-the-world-a-pk-12-black-studies-curriculum-for-new-york-city-public-schools-full-curriculum-pk-12/>

¹³ <https://www.tc.columbia.edu/articles/2024/december/nyc-council-funds-development-of-latine-studies-curriculum/#:~:text=Future%20New%20York%20City%20public,the%20organizations%20announced%20on%20Dec>

¹⁴ *Id.*

incorporate core educational requirements, including standards for literature and informational texts, language standards, and speaking and listening standards, social studies standards, and science skills.

- Consider a lesson studying the Biblical account of Noah. Through reading, hearing about, and discussing how Noah prepared for the flood, the ark that he built, the flood itself, and the aftermath of the flood, students learn to read with accuracy to support comprehension; ask and answer questions about important details; distill and summarize stories; understand themes; describe characters, settings, and major events in a story; and determine the meaning of unknown words and phrases. All of that also supports social studies standards related to gathering and interpreting evidence, chronological and geographic reasoning, causation, and contextualization.
- Likewise, in middle and upper elementary school grades, students in Jewish Studies classes study the Talmud, which is an extensive and detailed compilation of comments and debates on the Mishna (the first written summary of the Oral Law). Those studies teach students to follow complex arguments that span multiple pages and to weigh conflicting and competing viewpoints. The highly analytical framework students engage in during these studies meet, and often exceed, the required learning objectives.
- Marcus Jastrow's Dictionary of the Talmud aptly described the breadth of Talmudic studies: "The subjects of this literature are as unlimited as are the interests of the human mind. Religion and ethics, exegesis and homiletics, jurisprudence and ceremonial laws, ritual and liturgy, philosophy and science, medicine and magics, astronomy and astrology, history and geography, commerce and trade, politics and social problems, all are represented there."
- In Crescas' Critique of Aristotle, Harvard scholar Harry Austryn Wolfson described the Talmudic study yeshivas engage their students in as "the application of the scientific method to texts."
- There is therefore no question that Jewish Studies are capable of satisfying literacy and informational text reading standards (e.g., key ideas and details; craft and structure; integration of knowledge and ideas); speaking and listening standards (e.g., comprehension and collaboration; presentation of knowledge and ideas); language standards (e.g., vocabulary acquisition and use); and reading standards for literacy in history/social studies and science and technical subjects. Mathematical and science learning standards can also be met depending on specific content covered in the Talmud, like ratios and proportional relationships when learning about the size of specific religious objects (Math) and space systems when learning about the lunar cycle (science).
- This is not meant to suggest that every school will satisfy the entirety of the learning standards via its Jewish Studies curriculum. Some might, while others will do so in combination with the secular studies portion of the dual curriculum. The point is that the Jewish Studies taught by yeshivas is real academic learning which aligns with the learning standards and should be credited.

- Despite the obvious alignment between Jewish Studies and New York's educational requirements, New York entirely discredits and ignores the Yeshivas' Jewish Studies curriculum when evaluating whether the Yeshivas provide a satisfactory education.
- In other words, New York's position is that studying Egyptian Nile boats satisfies its educational requirements when students learn about those boats in a public school. But when students learn about Noah's ark in a yeshiva, the instruction categorically fails to satisfy core educational requirements. Likewise, public school students can receive credit for learning about Toussaint L'Ouverture but yeshiva students studying Judah ha-Nasi cannot.
- New York's discriminatory treatment unjustifiably disfavors distinctly Jewish learning and unlawfully disadvantages yeshivas. For example, on June 30, 2023, Oholei Torah was advised by the NYC Department of Education that its curriculum was unsatisfactory because "there was no evidence that instruction included a range of fiction and **secular** nonfiction texts." (emphasis added).
- In other words, the problem in the eyes of the City wasn't that the Oholei Torah students weren't sufficiently literate but that they achieved literacy through the study of texts that were deemed insufficiently "secular."
- New York's discriminatory treatment also violates basic constitutional rights that protect parental oversight of their children's education. As the Supreme Court has recognized, parents, not the State, have a "fundamental interest . . . to guide the religious future and education of their children." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). To the best of the Yeshivas' knowledge, New York has not sought to deprive schools reflecting and perpetuating other cultures of this right.
- New York's discriminatory treatment also seeks to override a parent's choice of "an education in which their religious values are interwoven into every area of study." *Blackwelder*, 689 F. Supp. at 128. Parents who choose a yeshiva education for their children do so precisely because yeshivas teach even secular topics in the context of Jewish faith, culture, history, and texts.
- New York's decision to categorically refuse to credit such instruction pressures the Yeshivas to spend less time and place less emphasis teaching Jewish Studies and to instead adopt a more standardized and secularized curricula.
- New York's approach to Jewish Studies also guarantees that the Yeshivas will receive negative substantial equivalency determinations, thus calling into question their ongoing ability to educate students in the Jewish tradition and heritage.
- As of the submission of this complaint, New York maintains its discriminatory treatment of the Yeshivas, which is causing them continuing harm.

B. New York Discriminates Against Yeshivas by Discrediting All Class with Instruction or Texts in a Language Other Than English.

Language, like Jewish Studies, is central to the Complainants' cultural heritage and educational mission. Some of the education yeshiva students receive is provided in Aramaic, Yiddish, and Hebrew. Those languages are culturally important to the Jewish people and, in some cases, educationally necessary. When yeshiva students study the Talmud, for example, they are engaging a non-English text and a complete study of it requires instruction in languages other than English.

New York, however, penalizes the Yeshivas for any non-English instruction. It refuses to consider courses—again, for substantial equivalency purposes—that include instruction or texts in a language other than English. That means lessons taught in Yiddish, Hebrew, and Aramaic or using texts in those languages are considered as if they have zero educational or academic value. That is absurd as a matter of pedagogy and improper as a matter of law.

New York's position discrediting all foreign language instruction at Complainant Yeshivas is not only discriminatory but doubly so, because the State and City actively promote in the public schools what it prohibits in Yeshivas.

- New York State and New York City both recognize and support public school “Dual Language,” programs that provide significant amounts of instruction in languages other than English.¹⁵ New York is actively encouraging its public schools to offer dual-language learning opportunities for public-school students. In a Dual Language program, schools offer participating students the opportunity to become proficient in a foreign language by receiving half or more of their instruction in core required classes in that foreign language.
- Indeed, the City operates more than 200 dual-language programs in its own schools. These are not classes geared to non-English speakers. Rather, these programs permit English speakers to learn a target foreign language by receiving up to 90% of their instruction in that foreign language.¹⁶
- The City's dual-language programs, of course, are consistent with federal law, which prohibits a state from forbidding instruction in a foreign language. *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923). Nevertheless, New York requires the Yeshivas to instruct their students in English and refuses to consider any instruction in Yiddish, Hebrew, or Aramaic when assessing the sufficiency of their education for substantial equivalency purposes.
- Incredibly, New York education officials have openly admitted that they have different standards for yeshivas and for public schools.
- On November 2, 2023, David Frank, the senior official within the New York State Education Department with responsibility for parochial schools admitted at a

¹⁵ <https://infohub.nyced.org/in-our-schools/programs/english-language-learners-programs-and-services>

¹⁶ Professor Aaron Twerski, *An Education in Double Standards*, City Journal (Dec. 4, 2023), <https://www.city-journal.org/article/new-yorks-double-standards-on-yeshivas>

training for local school authorities responsible for implementing the 2022 regulations that its English-only language requirement “is one difference between the substantial equivalence regulations and what happens in district [public] schools” and nonpublic schools.¹⁷

- Mr. Frank acknowledged that public schools are permitted to teach required classes in languages other than English but that Yeshivas do not have that right. And he made clear that this double standard targets yeshivas. He explained: “[I]f you do go to a school where they say we have great history instruction and it’s actually happening in the morning in our Talmudic class, and you go to see it and it is in Aramaic, that would not qualify” as credited instruction.¹⁸
- That double standard is plainly discriminatory. New York’s yeshiva-only rule that refuses to consider or credit classes with instruction or texts in any language other than English is another way by which New York seeks to force the Yeshivas to alter their curriculum by deemphasizing Jewish Studies and instead look and act more like the public schools. It means that yeshivas—such as Complainants—that insist on teaching the Jewish Studies that are central to their mission and are the reason parents choose them for their children will be penalized and will have their ability to continue to educate students in their Jewish heritage threatened.
- Instruction in Yiddish, Hebrew, and Aramaic is a critical component of the Yeshivas’ mission. Those languages are part of the shared ancestry and tradition of the Jewish people. And instruction in English alone is also impossible in the context of Jewish Studies because most of the materials are primary sources in the original vernacular.
- The Yeshivas provide instruction in English as well. And there are many ways to ensure that the students are proficient in English, including by administering assessment tests and other metrics of student learning. Thus, there is no basis for New York’s discriminatory rule discrediting foreign language instruction.
- Whatever New York’s reasons, they aren’t legitimate. New York cannot credit the instruction of publicly educated students in Spanish or Chinese but discredit the instruction of yeshiva students in Yiddish, Hebrew, or Aramaic.
- That type of discrimination has been directly addressed by the OCR. See *Combating Discrimination Against Jewish Students*, U.S. Department of Education Office for Civil Rights (2017), <https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>.
- By refusing to consider courses taught in a language other than English, New York is discriminating against the Complainant Yeshivas and penalizing them for engaging in activity that is protected under Title VI and the U.S. Constitution.
- As of the submission of this complaint, New York maintains its discriminatory treatment of the Yeshivas, which is causing them continuing harm.

¹⁷ *Id.*

¹⁸ *Id.*

C. New York is Discriminating Against the Complainant Yeshivas by Forcing Them to Utilize Specific Secular Texts When Instructing Their Students.

New York is not satisfied with dictating what subjects the Yeshivas teach and in what languages they instruct. New York has gone even further and has advised the Yeshivas that it is not sufficient for them to educate their students so that they are proficient in English. What is necessary is for the Yeshivas to use “a range of fiction and non-fiction texts” approved by New York to instruct their students. That Orwellian move is as unlawful as it is troubling.

Part of the reason parents choose Yeshiva education for their children is to ensure that they receive a carefully curated education consistent with their moral and religious beliefs. New York has no right to impose its own preferred reading list.

Shockingly, a senior NYC Department of Education official has outright told the Complainant Yeshivas that the reason for this requirement is to ensure that their students are exposed to material that “parents and schools wouldn’t otherwise” put before them. Specifically:

- On November 22, 2022, Robin Singer, Deputy Counsel for the NYC Department of Education, informed YMAH that it would have to submit to the City a list of reading material that is used for instructional purposes in the school. When challenged about the City’s interest in the specific texts used—rather than simply ensuring that their students are proficient in English—Singer responded that the purpose was to ensure that the students were “exposed to a range of materials that their parents and schools wouldn’t otherwise permit them to read.”
- Of course, if parents wanted their children to be educated in accordance with Ms. Singer’s choices and values, they could have chosen the public schools for them. They chose yeshiva education precisely because they wanted to direct their children’s education, upbringing, and moral development—a fundamental right granted to them by the U.S. Constitution that is not subject to the whims and vagaries of the NYC Department of Education or its bureaucrats.
- On at least three other occasions, Ms. Singer has advised Complainant Yeshivas that their instruction would not be deemed sufficient unless they submitted in writing a list of the fiction and non-fiction texts to the City for pre-approval. In each instance, Ms. Singer explained that the reason for this requirement was to ensure that students are exposed to material and ideas that their parents and schools wouldn’t otherwise put before them.
- On Wednesday, August 23, 2023, Ms. Singer conveyed that demand to Oholei Torah. On March 1, 2024, UTA received that same message from Ms. Singer. And on March 4, 2024, Ms. Singer conveyed that threat to the Bobover Yeshiva.
- This is no idle threat. New York has already penalized Oholei Torah by deeming its curriculum deficient due to a perceived insufficient “range of fiction and **secular** nonfiction texts to create opportunities for students to engage with a variety of topics and texts.” (emphasis added).

- New York’s sudden interest in dictating what yeshiva students read—it bears repeating, not whether they can read, but what they read—has no legitimate purpose. It is a thinly veiled attempt to paternalistically force its secular views into yeshiva education—a space New York has no right to invade.
- Yeshivas and parents have a fundamental constitutional right to tell New York to butt out. The State has no right “to standardize its children by forcing them to accept instruction,” whether that instruction comes directly “from public teachers” or indirectly from state-imposed reading lists. *Yoder*, 406 U.S. at 233. The Supreme Court has been clear that children are “not the mere creature of the State”—it is parents who have the right to direct their children’s education. *Id.* Children enrolled in yeshivas are no exception to that fundamental principle.
- Just as damning, New York’s forced reading lists amount to compelled speech. No government can force “private and public [schools], as well as the students, faculty, and staff therein, ... to convey a particular message that may contradict moral or religious values.” *Tennessee v. Cardona*, No. CV 2: 24-072-DCR, 2024 WL 3019146, at *20 (E.D. Ky. June 17, 2024). That is just what New York is doing by forcing children to read texts that their parents and teachers would not otherwise have them read.
- New York’s reading lists are also discriminatory. New York treats Jewish texts and Jewish-themed writing as inherently deficient and in need of supplementation. But it does not treat texts reflecting other cultures and different heritages in the same dismissive manner as it treats Jewish texts.
- By treating Jewish texts as inherently deficient, New York will effectively force the Yeshivas to teach from texts that may conflict with the morals and values central to their heritage and missions. That undermines the Yeshivas’ prerogative over their curriculum. And it undermines the parents’ choice to ensure that their children’s education is steeped in cultural and religious texts.
- New York has no right to impose its reading list on the Yeshivas even if its contents did not conflict with their morals and values. That is because the Yeshivas want to use Jewish texts in order to impart Jewish values, history and culture. If they are required to use New York’s reading list, they will have less time to teach the Jewish-themed texts that reflect the traditions and heritage they want to convey.
- New York’s intrusion into the Yeshivas’ reading program is inconsistent with the State’s own constitutional principle that “[p]rivate schools have a constitutional right to exist and parents have a constitutional right to send their children to such schools.” *Packer Collegiate Institute v. University of the State of New York*, 298 N.Y. 184, 192 (1948). By its discriminatory practice, New York has carved out an exception to this important right: private schools have the right to exist unless they are steeped in Jewish culture and heritage.
- New York’s targeted and disfavored treatment of Jewish texts strikes at the heart of Title VI’s anti-discrimination principles. As of the submission of this complaint, New York maintains its discriminatory treatment of the Yeshivas, which is causing them continuing harm.

D. New York Discriminates Against the Complainant Yeshivas by Interfering With Their Choice of Faculty in Plain Violation of the Constitutionally Guaranteed Independence and Authority of Religious Educational Institutions.

The United States Constitution protects religious educational institutions from government interference in matters of faith and doctrine. For yeshivas, the education they offer and the instructors they select to deliver it is at the heart of sustaining Jewish faith and tradition. None of that matters to New York, which has sought to interfere with the Yeshivas' hiring decisions under the pretense of assessing teacher competence.

- Yeshivas select their instructors carefully and based on religious and educational criteria. They hire those who are able to instruct their students in both the learning standards and the Jewish faith.
- Under the guise of the 2022 regulations, New York is meddling in matters of “faith and doctrine” that are off-limits to the State and City. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020).
- For example, New York is actively intruding on the Yeshivas' hiring decisions by demanding that the Yeshivas allow them to review their hiring processes and criteria, including resumes, interview materials, and other hiring documentation.
- The stated purpose is to determine whether the Yeshivas' instructors are “competent.” But that determination can be made, if at all, by observing classroom instruction and student performance.
- The demand to review the hiring process invades the “independence of religious institutions” in direct violation of the First Amendment. *Id.* The Supreme Court has been crystal clear “that educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” *Id.*
- In fact, the Supreme Court has addressed yeshiva education directly, explaining that “[r]eligious education is a matter of central importance in Judaism,” since “the Torah is understood to require Jewish parents to ensure that their children are instructed in the faith.” *Id.* at 755. That is why “[t]he contemporary American Jewish community continues to place the education of children in its faith and rites at the center of its communal efforts.” *Id.*
- As the Supreme Court recognized, “religious education and formation of students is the very reason for the existence of most religious schools,” and therefore “the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” *Id.*
- The Court found that the government has no license to get between religious schools and their faculty, even those who teach secular topics like math and science. Even they are expected “to model, teach and promote behavior in conformity” with religious values because educators at parochial schools are

“expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith.” *Id.*

- Thus, under the First Amendment, the Yeshivas enjoy “autonomy with respect to internal management decisions that are essential to the institution’s central mission,” and few things are more central to yeshiva education than “the selection of the individuals” who education their students. *Id.*
- In other words, the First Amendment guarantees the Yeshivas “the authority to select, supervise, and if necessary, remove [instructors] without interference by secular authorities.” *Id.*
- Despite the Yeshivas’ constitutionally guaranteed right to select instructors and to be free from state interference in their selections, New York effectively demands a say in the hiring decisions.
- Allowing the State to interfere in the Yeshivas’ hiring decisions is inappropriate, yields no necessary information on the relevant competency consideration, and destroys the independence and authority of religious educational institutions.
- New York’s actual classroom observations prove that the State is *not* trying to assess teacher competence but *instead* is using the regulations to assert greater control over these Yeshivas.
- For example, although New York found that “there was insufficient evidence demonstrating that [Bobover Yeshiva] teachers have the appropriate knowledge, skill, and disposition to deliver substantially equivalent instruction,” its reports of the classroom observations contradict that conclusory finding.
- For an English Language Arts class, the City evaluator described a lesson on action verbs, where “[t]he students and the teacher read aloud from a workbook,” students were asked “to identify the noun and verb in the sentence,” and “[m]ost students who participated orally were able to identify the noun and the action verb.”
- For a math class, the City evaluator described a lesson on ratios, where students answered the teacher’s questions correctly and then worked on additional ratio problems in a worksheet.
- For a science class, the City evaluator described a lesson about parallel circuits, where “[s]tudents worked on an experiment using parallel circuit boards that featured bell wires with stripped ends, battery holders, sockets, 1.5-volt bulbs, and batteries,” and “[t]he teacher asked the students questions to check for understanding, including asking why the bulb in the parallel circuit burned brighter than the other bulbs, and then explained parallel circuits” and also “asked students to try different ways to figure out the answers to his questions using their circuit boards.”
- Yet despite these observations, and the City’s conclusion that the Bobover Yeshiva provided substantially equivalent instruction in English Language Arts and Math, the City gave the school a failing grade on teacher competence because while “the

school provided some evidence of its recruitment and hiring policies, including a description of what they require from applicants to get hired . . . they did not provide samples of applications or resumes demonstrating that they have implemented these criteria in the hiring process.”

- In other words, what matters most to New York is not that the students were learning but rather what criteria this Jewish school used to select the Jewish teachers who provide instruction to the Jewish students whose parents chose to send them to that Yeshiva.
- There is no legitimate educational basis for that approach, which is nothing more than a pretense to give New York leverage over the faculty hiring decisions of Jewish schools. To date, schools steeped in other cultures have not faced any scrutiny or interference in their schools’ hiring decisions or criteria.
- New York’s use of the 2022 regulations to pry into Complainants’ hiring decisions is both discriminatory under Title VI and off-limits under the First Amendment.
- As of the submission of this complaint, New York maintains its discriminatory treatment of the Yeshivas, which is causing them continuing harm.

E. New York Applies a Discriminatory Standard to the Yeshivas by Refusing to Reasonably Accommodate Their Customs and Practices.

For reasons of modesty, gender separation is a widely observed practice in chasidic communities. Their schools are single-sex, not coeducational, with female faculty teaching at schools for girls and male teachers providing instruction in boys schools. This custom is practiced at all ages but becomes more of an imperative when the boys reach the age of 13 and the girls reach the age of 12 and they become bar mitzva and bas mitzva, respectively.

Complainant YMAH requested that the City send male evaluators when it expressed a desire to observe its eight grade classroom. The City and the State had already visited YMAH several times, met with its administration and visited numerous classrooms. During those visits, the evaluation teams were comprised exclusively or almost exclusively of female employees. Several were pedagogues but others were government attorneys without any educational experience who frankly don’t have much reason to observe a yeshiva school class in session. YMAH did not raise any objection or request an accommodation for those visits.

However, since eighth-grade students are generally 13 years old and thus obligated by chasidic custom and their faith to observe strict sex separation, YMAH made a respectful request that the City accommodate the cultural norms and faith practiced by the school and its students and send an all-male evaluation team to observe the eighth-grade classroom.

The City flatly refused YMAH’s request for a reasonable accommodation. YMAH respectfully reiterated its request several times. Each time, the City flatly refused to even consider the request.

- As recently as September 6, 2024, YMAH asked New York to accommodate its cultural traditions and religious practices by ensuring that only males would observe classrooms with boys who have reached the age of Bar Mitzva.
- New York officials again flatly refused. Instead, they insisted on an evaluation team of all females and demanded entry into the boys' classroom, despite the deeply insulting disregard of YMAH's practices and tradition.
- Again, there is no educational reason why the City must insist on sending an all-female evaluation team to sit in a classroom packed with 13-year-old chasidic boys. Nor does the City's intransigence comport with the State's "Culturally Responsive-Sustaining Education Framework" that is intended "to assist in the promotion and perpetuation of cultures."
- The City's refusal to accommodate YMAH and its students while insisting on visiting its eighth-grade classroom is yet another example of the City using the 2022 regulations as a cudgel to break down the boundaries that YMAH and the other Complainants have erected to protect and preserve their unique culture. *Kells v. Sinclair Buick-GMC Truck, Inc.*, 210 F.3d 827, 833–34 (8th Cir. 2000) (explaining that "repeated denials of requests for reasonable accommodations" provide evidence of discrimination.).
- New York's insistence that YMAH violate its principles is both discriminatory under Title VI and in violation of the First Amendment.
- As of the submission of this complaint, New York maintains its discriminatory treatment of the Yeshivas, which is causing them continuing harm.

VI. REQUESTED ACTION

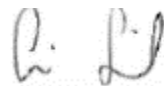
The foregoing facts demonstrate that the New York State Education Department and New York City Department of Education are engaged in pervasive and unlawful discrimination against the Complainants. Individually and together, each of the five discriminatory practices is targeted toward a goal of stripping the Yeshivas of their unique Jewish cultural heritage, customs, and practices. It gets at what they teach their students, the language of the instruction they offer, the texts they use to teach it, who offers the instruction, and even the make-up of the classroom.

In sum, it touches upon every aspect of a school. The discrimination has already detrimentally impacted and will continue to detrimentally impact the Yeshivas and their students. If it is allowed to continue, it will make a mockery of over a century of Supreme Court precedent guaranteeing parents the right to direct their children's upbringing by choosing parochial school education for them and the autonomy of parochial schools to fulfill their religious mission.

Therefore, the Yeshivas respectfully request that OCR investigate the recent and ongoing actions of the New York State Education Department and New York City Department of Education for violations of Title VI. If OCR finds that they have violated Title VI, they respectfully request that OCR require the New York State Education Department and New York City Department of Education to take the following actions:

1. Consider Jewish Studies classes on equal footing with other instructional courses, including by crediting them for satisfying the relevant learning standards.
2. Rescind its discriminatory policy of prohibiting Yeshivas from offering instruction in a language other than English and cease any other requirement that only instruction and texts in English can satisfy the learning standards;
3. Immediately cease any efforts to dictate specific reading materials as part of the Yeshivas' curriculum or otherwise require that specific secular texts be used as part of the Yeshivas' curriculum;
4. Assess teacher competence, if at all, through classroom observation or other metrics of student learning, and stop involving itself in the process by which Yeshivas recruit and hire their instructors;
5. Provide the reasonable accommodation requested by the Complainants regarding their gender separation practices;
6. Fully investigate the New York State Education Department and New York City Department of Education for any further instances of discriminatory or antisemitic actions and implement oversight and stringent enforcement policies to provide accountability and deterrence;
7. Require the New York State Education Department and New York City Department of Education to provide their personnel with training on cultural sensitivity of Orthodox Jewish and Chasidic customs and practices; and
8. Such other remedial steps necessary to ensure the New York State Education Department and New York City Department of Education fully comply with their Title VI obligations.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "A. Schick".

Avi Schick