

## *Reviving Yehoshua ben Gamla's Vision for Torah Education\**

By: AARON LEVINE

### Introduction

Yehoshua b. Gamla, a high priest in the period of the second Temple, enacted an ordinance for the Torah education of the youth. The ordinance, promulgated in approximately 64 C.E., transferred responsibility for both the running and the financing of elementary school education for boys from the household to the community. Yehoshua b. Gamla's vision was therefore for the community to set standards for Torah elementary schools and to enforce those standards.

Jewish communities today have, on the most part, no formal structure and, of course, no coercive power.<sup>1</sup> In consequence we are

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<sup>1</sup> Notwithstanding the non-existence of formal structure, when it comes to vital concerns for all Jews of a community, there is ample precedent for the community to come together. A case in point is the screening of charity collectors and the rating of the worthiness of the causes they represent. Going by various names, communal organizations for this purpose have sprung up in Baltimore, Bergen County, Toronto, Chicago, Los Angeles, Lakewood, Miami and the Five Towns. These organizations typically issue to qualified collectors letters of approval written on high security paper with a raised seal. Another feature is to issue to collectors script, which they redeem with the organization at face

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today very far from Yehoshua b. Gamla's vision for Torah education of the youth. To be sure, Yeshivot espouse ideologies and these ideologies manifest themselves in programs of distinctive character and specific emphasis. But this is a far cry from the adoption of uniform standards.

We take it as desirable that the Torah educational enterprise move closer toward the ideal promulgated by Yehoshua b. Gamla. Toward this end our concern here will be to propose a set of standards for Torah elementary schools. These standards, as we will show, are either inherent in or consistent with Yehoshua b. Gamla's ordinance. In addition, if the standards are to have any impact on the school system, incentives must be created for the schools to adopt them and compete with each other on their basis. Accordingly, in the second part of this paper we will outline a Torah subsidy program that is designed to make the schools compete on the basis of the standards. Because the standards and the subsidy proposal go hand in hand, we designate the Yeshivot throughout this paper as participating schools in the Torah Education Subsidy Program.

### **Yehoshua ben Gamla's Ordinance**

The backdrop against which Yehoshua b. Gamla's ordinance was enacted was the widespread neglect of the Torah education of orphans. This neglect stemmed from the general attitude that the duty to teach a boy Torah was primarily the responsibility of his father. The Torah education of orphans therefore suffered. After a few attempts to remedy the situation proved inadequate, Yehoshua b. Gamla enacted his ordinance:

[Local authorities] should install (*moshivin*) teachers of children - in every district (*medinah*) and town (*ir*) - and they should bring in [children] of ages six or seven to be taught by these teachers.<sup>2</sup>

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value. One of the clear-cut successes of these organizations has been to ferret out fraud. (Interview with Dr. Avrum Pollack, President Star-K. The author thanks Rabbi S. Heinerman of the Star-K Kosher Certification for making available a number of documents that describe the work of these communal organizations).

<sup>2</sup> *Bava Batra* 21a.

The Sages regarded Yehoshua b. Gamla's ordinance as no less a milestone event in Jewish history:

For Rav Yehudah said in the name of Rav: - Indeed, remember that man—namely, Yehoshua b. Gamla—in a favorable way, for were it not for him, the Torah would have been forgotten by Israel.<sup>3</sup>

Let us now proceed to show that the essential feature of Yehoshua b. Gamla's ordinance was to transfer supervision of teachers from private hands to the community.

Proving this thesis begins with an examination of how the classical codifiers *Rif*, *Rambam*, *Rosh*, *Tur*, and *Shulhan Arukh* record Yehoshua b. Gamla's ordinance. Given that the motivation behind the ordinance was the neglect of the Torah education of orphans, we would have expected these codifiers to say that Yehoshua b. Gamla decreed that in each town Torah schools for the orphans and poor should be established. Such a formulation conveys that as far as households of means are concerned, the system of private arrangements continued. However, none of these codifiers gives any indication that Yehoshua b. Gamla's ordinance was concerned with the Torah education of orphans only. Quite the contrary, what they say is that each town must install (*moshivin*) a school for its youth.<sup>4</sup> Since the schools were established for everyone, it follows that both the financing and the running of the schools were the responsibility of the community.

What is implicit in what the codifiers had to say about Yehoshua b. Gamla's ordinance, finds explicit expression in the commentary of *Ramah*. In analyzing Yehoshua b. Gamla's ordinance, *Ramah* finds the word *moshivin* in the above Talmudic passage to be key to understanding exactly what the edict consisted of. *Moshivin* says that Yehoshua b. Gamla required the community to **set up** elementary school and pay the teachers from communal funds. These schools are for both the rich and the poor.<sup>5</sup>

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<sup>3</sup> *Bava Batra* 21a..

<sup>4</sup> R. Isaac b. Jacob Alfasi (Algeria, 1013–1103), *Rif*, *Bava Batra* 21a; Maimonides (Egypt, 1135–1240, *Yad*, *Talmud Torah* 1:1-7; R. Asher b. Jehiel (Germany, 1250–1327), *Rosh*, *Bava Batra* 2:6-7; R. Jacob b. Asher (Spain, 1270–1343), *Tur*, *Yoreh De'ab* 245; R. Joseph Caro (Safed, 1488–1343), *Shulhan Arukh*, *Yoreh De'ab* 245:7-22.

<sup>5</sup> R. Meir Abulafia (Spain, c.1180–1244), *Yad Ramah*, *Bava Batra* 21a.

*Ramah's* basic notion that Yehoshua b. Gamla's ordinance required that the community set up elementary Torah schools and hire teachers for them from communal funds finds agreement in the formulations of later authorities.

Let's begin with the formulation of *Tashbetz*. In *Tashbetz's* understanding Yehoshua b. Gamla's ordinance called for the Jewish community to hire an individual with the specific task of teaching Torah to the youth of the town. Citing the Talmudic dictum: "Any town in which there are no schoolchildren studying Torah is eventually destroyed,"<sup>6</sup> *Tashbetz* posits that the responsibility for the community to appoint a *melammed tinokot* (Torah teacher for children) is more fundamental than their duty to appoint a cantor. The specific issue *Tashbetz* dealt with is whether the *melammed tinokot* is exempt from paying government taxes. In his ruling *Tashbetz* exempts him. If the cantor is exempt, *a fortiori* a *melammed tinokot* is exempt, based on his being a public employee.<sup>7</sup>

Following closely the basic contours of *Ramah, Shulban Arukh ha-Rav* posits that the ancient ordinance mandated the community to set up elementary-level Torah schools for all the youth of the town, both rich and poor. The tax that supported the school was proportional to wealth. All the townspeople were required to participate in the school tax levy, even families that had no children in the school system. Moreover, since the tax went to support the Torah education of the poor, it took on the character of a charity levy. Accordingly, Torah scholars, who are usually exempt from participating in communal levies, were required to participate in the school tax levy, as they too must support the Torah education of the poor.<sup>8</sup>

Another authority that follows *Ramah's* line is R. Simha Meir of Dvinsk. Noting that in the first Scriptural passage of the *Shema*, the duty to teach Torah is written in singular: "You shall teach them to your sons....,"<sup>9</sup> R. Meir Simha posits that in this passage the Torah speaks of the obligation of the community to teach its members To-

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<sup>6</sup> *Shabbat* 119b.

<sup>7</sup> R. Simeon b. Tzemmah Duran (Algiers, 1361–1444), Responsa *Tashbetz* 3:153.

<sup>8</sup> R. Shneur Zalman of Liadi (Russia, 1745–1812), *Sh. Ar. ha-Rav*, Yoreh De'ah 245: 3.

<sup>9</sup> Deuteronomy 6:7.

rah. What the verse implies is that the community must set up and finance the running of Torah schools for its young and pay these teachers out of communal funds. The harsh Talmudic dictum: “**Any town in which there are no school children** studying Torah is eventually **destroyed**”<sup>10</sup> is based on the verse “**You** shall teach them to your sons.” The duty for the community to set up schools for the young, concludes R. Meir Simha, is not based solely on Yehoshua b. Gamla’s ordinance.<sup>11</sup>

Finally, let’s take note of the view of *Va-Yoel Moshe*. Preliminarily, *Va-Yoel Moshe* points out that a father’s duty to teach his son Torah requires him, if necessary, to hire a tutor for this purpose. What Yehoshua b. Gamla’s innovation did was mandate for the community the establishment of Torah schools for everyone. The objective of the ordinance was that Torah education for the youth should reach the rich child, the poor child, and, especially the child who has no father to worry about his spiritual needs.<sup>12</sup>

What proceeds from the above formulations is that Yehoshua b. Gamla’s focus was not just<sup>13</sup> on the Torah education of orphans.

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<sup>10</sup> *Shabbat* 119b.

<sup>11</sup> R. Meir Simha of Dvinsk (Rega, Latvia, 1843–1926), *Ohr Sameah* on *Yad, Talmud Torah* 1:2.

<sup>12</sup> R. Yoel Teitelbaum (Romania, Brooklyn, 1887–1979), *Va-Yoel Moshe, Maamar Lashon ha-kodesh* of 7.

<sup>13</sup> In contradistinction to the views cited in the text, R. Moshe Sofer (Hungary, 1762–1839), *Hatam Sofer, Bava Batra* 21a apparently understood that Yehoshua b. Gamla’s entire focus was on the Torah education of orphans. R. Sofer begins his thesis by positing that a father’s biblical duty to teach his son Torah is not fulfilled by merely **offering** his son lessons. Rather, the father must take whatever steps are necessary to ensure that his child actually **receives** and **absorbs** the instruction. Accordingly, if the father is not up to the task he must hire a tutor to accomplish this. Since it is forbidden to take money for teaching someone Torah, the fee the tutor takes is to ensure that the child will stay put and not run away from the lesson. This fee is called *sekhar shimmur*, i.e. compensation for “watching” the child. For the father, discharging his Torah instruction duty to his son always takes precedence over his duty to teach Torah to others. This holds even if teaching one’s own son Torah entails an expense, while teaching someone else Torah involves none. Within these parameters a void naturally existed in regard to the Torah education of an orphan. Since no individual is

Rather, his ordinance ended the system of private arrangements and called for the town to set up a school for its children.

Given that Yehoshua b. Gamla's ordinance essentially ended private arrangements by parents in favor of a community school, it would stand to reason that along with the responsibility to set up and financially maintain the school, the community also undertook to supervise the teachers. Indeed, the position of *sofer mata*, mentioned in the Talmud, is understood by *Rashi* to mean "a head teacher, who appoints *melammedim* and supervises their work."<sup>14</sup>

If the *sofer mata* is in charge of hiring and supervision, the standards Halakhah sets for work routine and performance of *melammedim*, as well as its rules to ensure that the educational process is working well, were in the hands of this functionary to enforce.

The first three standards we propose for the Torah Education Program relate directly to supervision of the school's educational process. These standards are: a school should be required a) to set up a performance appraisal system for its teachers; b) to test their pupils on the curriculum to ensure that the educational process is working well; and c) to set up guideposts for maximum class size. We will proceed to show that Halakhah requires these standards, and given the historical precedent that the *sofer mata* supervised the Torah

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obligated or has the authority to coerce an orphan to study Torah, the Torah education of an orphan went neglected. To fill this void, Yehoshua b. Gamla promulgated a decree that required the community to take on the responsibility of the Torah education of orphans. It consisted of hiring a teacher for the orphan children and ensuring their attendance.

<sup>14</sup> R. Solomon b. Isaac (France, 1040–1105), *Rashi, Bava Batra 21a. Tosafot (Bava Batra 21a)*, however, understand *sofer mata* to mean the person who writes up the legal documents of the town. R. Israel Schepansky (*ha-Takanot bi-Yisrael*, vol. 4, p. 267) notes that a *melammed tenokot* in the *Mishnah (Shabbat 1:3)* is also called *hazan*. Putting together *Rashi's* understanding of *sofer mata* and the functionary called *hazan* leads R. Schepansky to posit that a hierarchal organizational structure existed for the Torah education of the youth. The one who taught the children of the town was the *hazan* and the one who supervised him was called *sofer mata*.

teachers of the community, enforcement of these standards should not be left to self-regulation alone.

### (1) Performance Appraisal for Teachers

Participant schools should be required to set up a performance appraisal system for their teachers.

In the modern scene, labor relations are often set up with a performance appraisal system. In this system an employer sets for his employee performance goals *in advance* and provides the employee with *feedback* so that corrective action can be taken before an adverse personnel decision is rendered. Without such a system in place, legitimate expectations will be dashed and personnel decisions will be perceived as arbitrary. Elsewhere, we have detailed the halakhic rules that require such a system.<sup>15</sup>

For the Torah educational sector, the performance appraisal system would ensure that the productivity standard Halakhah sets for the *melammed* (Torah elementary school teacher) is achieved. To get an idea of what these standards are like, we need only look at the routine Halakahah prescribes for the *melammed*. This routine requires the *melammed* to hold classes for the children for the entire day and part of the night.<sup>16</sup> This schedule holds for *Shabbat* as well, with the only difference being that on *Shabbat* the *melammed* does not teach new material, but instead reviews.<sup>17</sup> The only exception to the full schedule of hours is that the pupils are let out early on Fridays and no classes are held on holidays.<sup>18</sup> That the pupil must not remain idle is evidenced by the requirement that the *melammed* must remain on his

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<sup>15</sup> Aaron Levine, *Case Studies in Jewish Business Ethics* (Hoboken, New Jersey: Ktav Publishing Company Inc., Yeshiva University Press, 2000), pp. 304–321.

<sup>16</sup> Maimonides, *Yad, Talmud Torah* : 2:2; R. Jacob b. Asher (Spain, 1270–1340), *Yoreh De'ab* 245; R. Joseph Caro (Israel, 1488–1555), *Shulban Arukh, Yoreh De'ab* 245:11; R. Jehiel Michel Epstein (Belarus, 1829–1908), *Arukh ha-Shulban, Yoreh De'ab* 245:11.

<sup>17</sup> *Yad*, op. cit.; *Tur*, op. cit.; *Sh. Ar.*, op. cit., 245:14; *Ar. haSh.*, op. cit.

<sup>18</sup> *Yad*, op. cit.; *Tur*, op. cit.; *Sh. Ar.*, op. cit., 245:12; *Ar. haSh.*, op. cit.

post if there is no one to replace him, even when he is in the week of mourning for a relative.<sup>19</sup>

Accompanying this rigorous work schedule is a demanding productivity expectation for the teacher. Preliminarily, let's note that causing an employer a *peseida d'lo hadra* i.e. an "irretrievable loss" is grounds for discharging his worker.<sup>20</sup> For a teacher of Torah, one aspect of *peseida d'lo hadra* is idling on the job, as time lost for the pupils can never be retrieved.<sup>21</sup> Teaching inaccurately<sup>22</sup> is also regarded as *peseida d'lo hadra* and subjects the teacher to dismissal.<sup>23</sup> Abusing a pupil, physically or sexually, should also fit into the category of *peseida d'lo hadra*.<sup>24</sup>

Temperament is no less important than getting quick results. In this regard *Rambam* cautions the teacher not to get angry if the students do not immediately absorb his lesson. Instead, he should have patience and review the material many times so that the students will get full comprehension.<sup>25</sup>

Once it is recognized that Halakhah has definite standards for the *melammed*, the case for setting up a performance appraisal system is reinforced. This is so because Halakhah does not allow a teacher to

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<sup>19</sup> *Ar. haSh.* op. cit. 384:6.

<sup>20</sup> *Bava Metz'ia* 109b; R. Isaac b. Abraham Alfasi (Algeria, 1013–1103, *Rif*, ad locum; *Yad, Sekhirut* 10:7; *Rosh, Bava Metz'ia* 9:38; *Tur, Hoshen Mishpat*, 306; *Sh. Ar., Hoshen Mishpat* 306:8; *Ar. haSh., Hoshen Mishpat* 306:16.

<sup>21</sup> *Yad*, op. cit., *Tur*, op. cit., *Sh. Ar.*, op. cit., *Ar. haSh.*, op. cit.

<sup>22</sup> Teaching correctly, but failing to catch the mistakes of the pupil, according to R. Vidal Yom Tov of Toloso (1300–1370, *Maggid Mishneh, Yad, Sekhirut* 10:7), does not constitute *peseida d'lo hadra* and hence does not rise to the level of an offense that warrants dismissal.

<sup>23</sup> *Yad*, op. cit., *Tur*, op. cit., *Sh. Ar.*, op. cit., *Ar. haSh.*, op. cit. In the opinion of R. Jehiel Michel Epstein, a single isolated incidence of *peseida d'lo hadra* does not trigger immediate dismissal. What is needed are three incidences of such conduct or a forewarning against this conduct. (*Ar. ha-Sh.*, op. cit.)

<sup>24</sup> For a description of the nature of the damage sexual abuse does to a child, see Judith Lewis Herman, *Child Abuse* (Cambridge, Massachusetts: Harvard University Press, 1992), pp. 96–114. For a discussion of how halakhah deals with the issue of child abuse, see Steven Oppenheimer, "Confronting Child Abuse," *Journal of Halacha and Contemporary Society*, Number XLIV, Fall 2002, pp. 31–51.

<sup>25</sup> *Rambam, Yad, Talmud Torah* 4:4.



be fired on the basis of anecdotal evidence or hearsay.<sup>26</sup> Instead, what it takes to fire a teacher is firsthand observation of the misconduct by a reliable witness. Enforcing halakhah's productivity standards hence requires a school to have in place a formal system of observing its teachers.

Given that labor relations require the setting up of a performance appraisal system, a school should set up this system for its secular teachers as well.<sup>27</sup>

## (2) Testing Requirement for Pupils

Another aspect of ensuring that the educational process is working well is to monitor how well pupils are absorbing their lessons. Participating schools should therefore be required to test their pupils on the curriculum.

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<sup>26</sup> See *Ar. baSh, Orab Hayyim* 53:26. The case specifically deals with the prohibition to fire a cantor based on rumor. Firing someone based on rumor violates the prohibition against accepting an evil report, recorded in Leviticus 19:16. See *Arkhin* 15b; *Yad, De'ot* 7:3.

<sup>27</sup> Notwithstanding that much of the secular curriculum of elementary school education can be viewed as necessary preparation for Torah study, there can be no doubt that *peseida de'lo hadra* would not be defined in the same terms there as it is for the Torah educator. This is so because *Torah* study and *Torah* study alone is designated by our Sages as *hayyei olam*, i.e. everlasting life. In this regard, an act of prayer rises only to the level of *hayyei sha'a* i.e. temporal life, compared with the *hayyei olam* status of Torah study (*Shabbat 10a*), which makes every lost moment of Torah study an irreplaceable loss. In the imagery of the sages, the Torah proclaims: "If you forsake me for one day, I will forsake you for two days." (*Midrash Shmuel Rabbati Parshah 1*). The irreplaceable nature of time lost in Torah study makes the *melammed tinnokot* subject to immediate dismissal if he idles on the job. In contrast, since secular subjects don't fall into the category of *hayyei olam*, lost time on account of "idleness" can be made up and should therefore not be classified as *peseida d'lo hadra*. What the above argues is only that idleness on the part of a secular teacher should not be equated with idleness by a teacher of Torah. If the idleness of the secular teacher is, however, frequent or continues despite repeated warnings, the conduct could very well warrant firing.

Testing pupils has a basis in halakhah. It follows from a duty the *melammed* acquires vis-à-vis his pupils when they come under his tutelage. This duty is set out by the Torah:

“*Ve-shinnantam* (you shall thoroughly teach them) to your sons and you shall speak of them while you sit in your home and while you walk on your way, when you lie down and when you rise.”<sup>28</sup>

This teaches us that the words of the Torah should be sharply honed in your mouth, such that if a man asks you something—concerning a point of Torah knowledge—you will not stammer before answering him; but rather, you will be able to answer him immediately. This idea emerges from other verses too, as it is written:<sup>29</sup> “Say to Wisdom: You are my sister...”<sup>30</sup>

In the verse “*Ve-shinnantam*” the sages understand ‘sons’ as referring not to biological sons but to students, and the word ‘father’ as referring to a spiritual father, which is how a teacher of Torah is often designated.

One could argue that the *ve-shinnantam* duty for an elementary school is limited. Consider that *Avot* 5:25 makes the curriculum for an elementary school pupil consist mainly of *Mikra* i.e. Scripture: “A five-year-old begins Scripture; a ten-year-old begins *Mishnah*. . . a fifteen-year-old begins to study *Gemara* (Talmud).” The issue, then, becomes whether *ve-shinnantam* applies to the teaching of *Mikra* to children in the age range from five- to ten-year-olds. In the opinion of *Haamek She’la* and *Arukh ha-Shulhan*, the *ve-shinnantam* duty makes sense and has pedagogical application only when the subject matter is *Mishnah* or Talmud.<sup>31</sup> Let us note, however, that Yeshivot and day schools today do not generally follow the rigid sequence prescribed at *Avot* 5:25. Instead, pupils are exposed to Talmud as early as at age eight.<sup>32</sup>

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<sup>28</sup> Deuteronomy 6:7.

<sup>29</sup> Proverbs 7:4.

<sup>30</sup> *Kiddushin* 30a.

<sup>31</sup> R. Naftali Tzvi Yehudah Berlin (Russia, 1817–1893), *Haamek She’la* at *Sheiltot, va-Ethannan*, 142; R. Jehiel Michel Epstein (Belarus, 1829–1908), *Arukh ha-Shulhan*, op. cit., 245: 4.

<sup>32</sup> R. Yaakov Kaminitzky (New York, 1891–1986), *Emet le-Yaakov, Avot* at 5:25. The present practice is apparently rooted in *Siftei Kohen, Yoreh De’ab* 245 ot 5.

Since in current practice pupils are taught *Mishnah* and Talmud at a very early age, the *melammed's ve-shinnantam* duty sets in at the same time that he begins to instruct his pupils in *Mishnah*.

What proceeds from the *ve-shinnantam* duty is that in order to get designated as a participating school, a school must have a testing requirement for its pupils. But testing is not an end in itself. Rather it is a means of ascertaining if the students have absorbed their lessons on the level of *ve-shinnantam*. Accordingly, if students perform below par on these tests, repeat learning must be done until retesting shows that *ve-shinnantam* has been achieved.

If we accept the notion that *ve-shinamtam* does not apply to *Mikra*, it does not follow that participating schools should not be subject to any testing requirement whatsoever for the youngest grades where only reading, writing and *Mikra* are taught. Recall that Halakhah requires labor contracts to be set up with a performance appraisal system. Requiring pupils to be tested is just another component of a performance appraisal system to ensure that the learning process is working well. Moreover, given that under the Torah Education Subsidy Program, the community appeals for funds for the education of the poor in schools with an efficient learning process, the standards the community sets must ensure excellence as much as possible.

Should the testing requirement extend to the secular part of the curriculum as well? Yes. While Torah authorities debate what the permissible parameters for the study of secular subjects<sup>33</sup> are, there should be little or no debate that what is studied in elementary schools preponderantly fits into categories that make the curriculum preparation for, or an aspect of, Torah study itself. Basic writing and reading skills in the English language are tools for the comprehension, and vehicles for articulation and communication, of what is studied in the Torah part of the curriculum. In this regard, let's note that R. Yosef Eliyahu Henkin (New York, 1881–1973) felt that it is educationally optimal to give students instruction in Torah in the lan-

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For an alternative theory of why the sequence of study prescribed at *Avot* 5:25 changed over time, see *Me'Am Lo'ezer*, *Avot* 5:25.

<sup>33</sup> For an excellent article on this debate, see R. Moshe Weinberger, "On Studying Secular Subjects," *Journal of Halacha and Contemporary Society*, Vol. XI, 1986, pp.128.

guage they converse in.<sup>34</sup> Similarly, basic knowledge of mathematics and science is essential for the understanding of Torah. In addition, the understanding of history and the acquisition of basic knowledge in the sciences and mathematics give us an inkling of G-d's wisdom and governance of His world. Study of these disciplines hence is the path to fulfilling our duty to fear and love G-d.<sup>35</sup>

Since the secular subjects are preparation for or an aspect of Torah study itself, the testing requirement should also apply to the secular part of the curriculum.

### (3) Maximum Class Size

Torah education law sets rules regarding maximum class size:

And Rava [also] said: the number of [students that] teachers [have in their classes is] twenty-five children. - If there are fifty [students] we install two [teachers]. - If there are forty [students] we appoint a Resh Dukhna [an assistant to the teacher] - and [the teacher] is given [some financial] support from the town [to defray the cost of hiring the assistant].<sup>36</sup>

Inasmuch as this rule is designed to ensure effectiveness in the education process, its enforcement in Talmudic times was undoubtedly in the hands of the *sofer mata*. What follows is that maximum class size should be one of the standards the community sets for participating schools. There is, however, room to formulate the maximum-class-size requirement in flexible terms. This is so because the exact meaning of Rava's dictum is a matter of dispute:

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<sup>34</sup> R. Yosef Eliyahu Henkin, *Edut le-Yisrael*, p.122.

<sup>35</sup> For sources that support my contention that the secular curriculum of Yeshivot and Day Schools should be regarded predominately as either preparatory for Torah study, enhancing the understanding of Torah or as a vehicle to acquire love and fear of G-d, C.F. Maimonides, *Yesodei ha-Torah*, 2::2-3, Maimonides, *Moreh Nevukhim* 1:34; R. Yohantan Eybeschutz (Poland, 1690–1764), *Ya'arot Devash* 2:7; R. Abraham Yeshayahu Karelitz *Hazon Ish* (1878–1953), *Emunah U-betabon* 1:8. Many of these sources are quoted in R. Moshe Weinberger's article, cited in note 40.

<sup>36</sup> *Bava Batra* 21a.

*Rambam* understands Rava to say that one *melammed* suffices until the pupil population reaches twenty-five. If the class numbers anywhere between twenty-five and forty students the *melammed* must be given an assistant. If the class reaches more than forty, the class is split into two and two teachers must be hired.<sup>37</sup> *Rosh*, however, interprets Rava to say that below forty, one *melammed* suffices. For a class size between forty and forty-nine, an assistant must be provided for the *melammed*. Once the class size reaches fifty, the class must be split and two *melamdim* appointed.<sup>38</sup>

Decisors take opposing views in the matter of class size. *Shulhan Arukh* follows *Rambam's* position,<sup>39</sup> while *Tur* rules in accordance with his father, the *Rosh*.<sup>40</sup>

*Shakh* takes note of the above controversy and opines that the actual standard for class size in practice depends on the nature of the *melammed* and of the particular pupils under his tutelage.<sup>41</sup> *Shakh's* comments argue for a flexible standard for class size that would qualify as a participating school.

Reinforcing the case for a flexible standard is *Tashbetz's* proposition that the maximum-class-size rules as well as the rules for the provision of assistants were specifically designed to allow the *melammed* to demand help in handling his duties as a teacher. The analog here is if an employee is hired for a specific task entailing light physical work, his employer may not switch him to a different assignment entailing heavier physical work.<sup>42</sup> What we can infer from *Tashbetz's* analogy is that the rules relating to student benchmarks were, in his opinion, designed for the benefit of the *melammed*, rather

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<sup>37</sup> Maimonides, *Yad, Talmud Torah*, 2:5.

<sup>38</sup> R. Asher b. Jehiel, *Rosh, Bava Batra* 2:7.

<sup>39</sup> *Sh. Ar., Yoreh De'ab*, 245:16.

<sup>40</sup> *Tur, Yoreh De'ab* 245.

<sup>41</sup> R. Shabbatai b. Meir ha-Kohen (Poland, 1621–1662), *Siftei Kohen, Sh. Ar., Yoreh De'ab* 245 ot 10. In contradistinction to *Shakh*, the 17<sup>th</sup> century decisor R. Aaron Samuel b. Israel Kaidanover (Poland, 1614–1676, Responsa *Emunat Shemuel* 26) averred that the maximum-class-size benchmark prescribed in the Talmud was no longer operative in his time. With the aim of giving pupils proper individual attention, R. Kaidanover felt that, for his time, maximum class size should be no more than ten or twelve.

<sup>42</sup> R. Simeon b. Tzemmah Duran, *Tashbetz* 3:153.

than to promote optimal learning conditions for the pupils. What follows is that the *melammed* would have the prerogative to accept a class size larger than the parameters set by Rava's dictum. Maintaining that *Tashbetz's* view here is normative, R. Moshe Bleich (New York, contemporary) finds support for *Tashbetz's* position from Rabbeinu Jonah's analysis of the law of *Resh Dukbna*.<sup>43</sup>

In setting the maximum-class standard, rabbinical authorities might want to consider the evidence in the secular literature regarding the relationship between class size and pupil performance.<sup>44</sup>

#### **(4) Minimum Enrollment and Compulsory Attendance Records**

To qualify as a participating school, it would have to meet a minimum-enrollment requirement. We will show that a corollary of this standard is the requirement of a school to keep attendance records to ensure that its students are not just enrolled, but are receiving their education.

The requirement of both a minimum enrollment and attendance record keeping can be derived from further analysis of Yehoshua b. Gamla's ordinance. What needs to be clarified is to what extent Yehoshua b. Gamla's ordinance required school-age children of a town to combine into a single school.

*Rashba's* commentary on the following Talmudic passages regarding the right of a townsman to send his son to a neighboring town is relevant to the issue at hand:

Rava said: From the [time] Yehoshua ben Gamla's ordinance [was enacted [one] may not take a [child from his] town to [attend classes in another] town. However, one may take [a child] from [the vicinity of one] synagogue to [the vicinity of another] synagogue [within the same town]. But, if a river separates [these two districts, a child should not be taken from one to the other]. If there is a bridge [spanning the river] one may take [a child across it]. But, if

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<sup>43</sup> R. Moshe Bleich, "Class Size - A Halakhic Perspective," *Tradition*, volume 38 no. 4, Winter 2004, pp. 29–47.

<sup>44</sup> Cf. *Class Size: "Counting Students Can Count,"* American Educational Research Association, Volume 1, Issue 2, Fall 2003.

the bridge consists of [only] a narrow plank, one may not take [a child across it].<sup>45</sup>

Recall Rava's dictum regarding maximum class size. *Rashba's* text on Rava's dictum departs from the standard texts and records the benchmark to be twenty-four rather than twenty-five.<sup>46</sup> In addition, *Rashba* understands that Yehoshu b. Gamla's main concern was that each town with a pupil population of twenty-five should establish a school for these children. This understanding of Yehoshua b. Gamla's ordinance leads *Rashba* to question why Rava connects it with his prohibition against "busing" children. Since it was Yehoshua b. Gamla's primary objective (*ikur takanah*) to make it an **absolute requirement** for a town to have its own local school if its pupil population numbered twenty-four, what does Rava tell us that we don't already know? This leads *Rashba* to the conclusion that Rava's prohibition refers to the instance where the local pupil population is less than twenty-four. In disagreement with other opinions, however, *Rashba* goes on to say that even in that instance, one parent can coerce the other to hire a teacher for their children. If the number of pupils is less than twenty-four, and some parents insist that the entire group hire one teacher for all the children, and others want to hire in smaller groups, the group must hire one teacher for all the children. At the conclusion of his exposition, *Rashba* informs us that *Ramban* (his *rebbe*) concurs with his understanding of Yehoshua b. Gamla's ordinance.<sup>47</sup>

Proceeding from *Ramban's* and *Rashba's* opinion is that Yehoshua b. Gamla's edict mandated not only compulsory education for the elementary school children, but also cooperative efforts on the part of parents to set up one school for all their children.<sup>48</sup>

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<sup>45</sup> *Bava Batra* 21a.

<sup>46</sup> R. Mordecai Leib Katzenelenbogen, Editor, *Hiddushei ha-Rashba, Bava Batra*, vol. 1, *Mosad ha-Rav Kook Edition*, p.358, note 14.

<sup>47</sup> R. Solomon b. Abraham Adret (Spain, 1235–1310), *Hiddushei Rashba, Bava Batra* 21a.

<sup>48</sup> *Ramban's* and *Rashba's* thesis that Yehoshua b. Gamla's ordinance applies even if the local pupil population is less than twenty-five finds support in the work of other authorities. In their presentation of Yehoshua b. Gamla's ordinance, *Rif, Rambam, Tur* and *Sh. Ar.* make no mention that the ordinance does not apply if the pupil population numbers less than twenty-five. The silence of the codifiers regarding a

A variant view is taken by *Tosafot* and *Rosh*. They argue that the notion of communal coercion for a local school applies only if the pupil population of the town reaches twenty-five or more. Accordingly, if said population is less than twenty-five, the parents are allowed to satisfy their duty to give their children a Torah education by sending them to a neighboring town. But, if the local pupil population is twenty-five or more, the children must be educated locally.<sup>49</sup>

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minimum pupil population says that there is no minimum. That silence does not, however, firmly establish the position of these authorities on the specific below-twenty-five pupil case *Ramban and Rashba* deal with. This is the case where some of the parents want to go it alone and others want a single teacher for all the children to be hired.

The key here, in the opinion of this writer, is the comment *Ramban* makes that Yehoshua b. Gamla's ordinance applies "even when the pupil population is only two or three" (*Ramban*, *Bava Batra* 21a). What can be inferred from *Ramban's* comment is that Yehoshua b. Gamla's ordinance does not apply when there is only **one** pupil in the town. The notion here is that it takes at least two pupils studying together under a teacher to be called a school. This says that one aspect of a school is the interactive process of the pupils with each other and the teacher. We'll assume that the benefit of the interactive force keeps increasing until the twenty-five-pupil level, but further increases in the class size have a diminishing effect. Let's now relate the interactive effect to Yehoshua b. Gamla's ordinance. Given that he required each town not merely to educate its youth, but to **set up a school**, parents must execute their duty to educate their children without undermining the viability of the local school. Therefore, since "going their own way" both increases the cost per child for the remaining households and, in addition, reduces the potential interactive benefit that would have obtained with all the children combined into a single class, parents would be denied the option to "go it alone" when the town pupil population is less than twenty-five.

<sup>49</sup> *Tosafot*, *Bava Batra* 21a; *Rosh*, *Bava Batra* 2:7

In his work *Jewish Education and Society in the High Middle Ages* (Detroit: Wayne State University Press, 1992), Rabbi Dr. Ephraim Kanarfogel offers the thesis that no communally funded and administered elementary Torah education existed in Ashkenaz (Germany and northern France) during the eleventh, twelfth and thirteenth centuries. Instead, private arrangements were made between fathers and tutors. "In many cases the tutor was hired for just one student but sometimes he taught several" (p. 19). Among the various pieces of evidence R. Kanarfogel



What the aforementioned has demonstrated is that Yehoshua b. Gamla's ordinance went beyond mandating compulsory education for the youth and decreed that parents in a town should join together to establish a school. The disagreement is only on whether this requirement applies even if the local pupil population is less than twenty-five. Given the expected cooperative efforts of parents in a town, does Jewish education law approve of home-schooling? *Arukh ha-Shulhan* addresses this issue: Suppose some of the fathers of the town are willing to teach their sons Torah, while other fathers, who cannot undertake this task, demand that all the parents get together

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draws upon to bolster his thesis is a survey of forty Responsa emanating from Ashkenaz that deal with the hiring and terminating of *melammedim*. In all instances, the parents, rather than the community, are the hirer or supervisor of the *melammed*. One example is a ruling by R. Meir of Rothenburg (c. 1215–1293) that a father should be forced to hire a *melammed* for his son or teach the boy himself. Now, if organized schools existed at the time, R. Meir would have certainly directed the recalcitrant father to enroll his child in the local school. (p.19). Rabbi Karnarfogel's thesis is in opposition to the earlier works of the historians R. Chazzan and M. Gudemann, who maintained that an organized system of elementary education existed at that time (p.17).

The discussion in the text regarding the parameters of Yehoshua b. Gamla's ordinance can put R. Kanarfogel's theory into a halakhic framework. Recall the position of *Tosafot* and *Rosh* that Yehoshua b. Gamla's ordinance required the parents to join together and hire a single teacher for all their children only if the school-age population is twenty-five or more. If the number is less than twenty-five, the parents are free to make their own private arrangements for the education of their children and cannot be coerced into making a joint arrangement. Consider that the main Ashkenazic authority R. Kanarfogel cites in support of his thesis is R. Meir of Rothenburg, who was *Rosh's Rabbi*. Now, if we take *Tosafot* and *Rosh* as representative of the rabbinical authorities in *Ashkenaz*, we need only postulate that the towns where Jews lived were small and the pupil population did not reach the critical mass of twenty-five in each town. Moreover, even if we assume that some towns had elementary school children totaling twenty-five or more, the parents might sometimes still not have to join their children together in one class. This would obtain when the age differences of the children were so wide as to make it pedagogically impossible to join them into a single class under the instruction and supervision of a single *melammed*.

and hire one Torah teacher for their children. For this case, *Arukh ha-Shulhan* rules that the father who wants to home-school his child cannot be coerced to join in the hiring of the Torah teacher. The right to home-school his own child exempts the father from sharing the hiring expense of the rest of the parents, provided, of course, that that father pays his fair share in the Torah education of the poor.<sup>50</sup>

The legitimacy *Arukh ha-Shulhan* gives to home-schooling should apply only if the father undertakes to be the *melammed* (teacher of Torah) of his own child without requesting public assistance for undertaking the task. He should not qualify for a public subsidy because a one-pupil school was not Yehoshua b. Gamla's vision. His vision was that parents of school-age children should join and establish a Torah school for them. To be sure, if a father's desire to home-school his child does not disrupt the viability of the local school, we cannot stand in his way. But to subsidize a one-pupil school would undermine Yehoshua b. Gamla's ordinance.

A number of implications proceed from the notion that the ideal is for a child to attend a school together with the other children of his town. One implication is the responsibility for a school to maintain attendance records to ensure that its pupils are not just enrolled but attending. Beyond that requirement on the school, excessive absence without medical excuse should cause the school to forfeit the subsidy it would be entitled to for the student. The community should therefore set a truancy policy in tandem with its compulsory-attendance requirement.

Another implication is that to qualify as a participating school in the Torah Education Subsidy Program it would have to have enough pupils to be minimally regarded as a school, rather than as a private tutoring service. It would be up to the Torah authorities to decide the minimum school size to qualify as a participating school.

The minimum-enrollment requirement may well result in conferring temporary monopoly status on some participating schools. Consider that nearly forty percent of the day schools today enroll fewer than one hundred students. These schools are too small to realize economies of scale.<sup>51</sup> If the judgment is that the pupil population in a

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<sup>50</sup> *Ar. ha-Sh., Yoreh De'ab*, 245:27.

<sup>51</sup> "The Tuition Squeeze: Paying the Price for Jewish Education," *op. cit.*, p. 13.

particular neighborhood is too small to support two schools, the existing school should be conferred temporary monopoly status, provided, of course, that the established school accepts the community's standards. Economists call the above-described situation as the natural monopoly case. **A regulated monopolist is far better than an unregulated one.** Commitment to standards and the submission to an audit to ensure that they are implemented make the school responsive to criticism and receptive to new ideas that promise to better achieve those standards. The school's future now becomes tied to how well it meets them.

## **(5) Neighborhood Schools**

This section addresses several geographic issues. Consider that Yehoshu b. Gamla's ordinance called for each *ir* (town) to set up its own school so that local children should not have to travel to and from a school in another town. If Yehoshua b. Gamla's ordinance is taken as the vision for Torah elementary school education today, a subsidy program set up by the community should not undermine the ideal of the local school. Accordingly, to be eligible as a participating school for the Torah Education Subsidy, the school would have to be located in the *ir* of the community group that sets up the fund. What becomes critical therefore is how *ir* is defined in the modern setting. For this purpose we turn to the work of R. Moshe Feinstein (New York, 1895–1986), who addressed this in a different context.

The specific issue he dealt with was whether Monsey, New York should be regarded as a separate city. Preliminarily, R. Feinstein notes that the definition of *ir* has profound practical ramification. Consider that Halakhah lets a city's residents coerce each other to set up the city's basic needs such as a synagogue. In these matters the minority can coerce the majority. In addition, in the Land of Israel, halakhah calls for each *ir* to appoint its own judges. R. Feinstein goes on to assert that in determining which geographic area should be called an *ir*, it stands to reason that name alone cannot be the criterion. Instead, *ir* acquires its designation if people generally regard the residents of a particular area as being much more connected to each other than to some other town. On the basis of this criterion, R.

Feinstein ruled that Monsey, New York in 1959 had the halakhic status of an *ir*.<sup>52</sup>

R. Feinstein's criterion for *ir* should translate into a relatively wide area for designating a school a neighborhood school.

Another issue for the Torah Education Subsidy is whether pupils who attend a participating school but reside in a different neighborhood should count as part of that school's enrollment base. The issue turns on the application to the modern setting of Rava's dictum, recorded earlier, that pupils should not have to travel to and from a school outside their local area. For the purpose of making this judgment, let's take note of the diverse comments the early authorities made on Rava's dictum:

A key consideration here is *Rashi's* contention that Rava's dictum is rooted in the concern not to subject the children on a daily basis to the hazards of travel.<sup>53</sup>

While no competing rationale for Rava's dictum appears in the writings of the *Rishonim*, *Tosafot's* analysis of the dictum puts forward the view that the prohibition is not absolute, and also that there is another consideration behind the dictum. Preliminarily, let's not forget that Rava makes his dictum a consequence of Yehoshua b. Gamla's ordinance. Recall also *Tosafot's* position is that that ordinance becomes operative only if the pupil population of the town reaches twenty-five. Noting the link between Rava's dictum and Yehoshua b. Gamla's ordinance, *Tosafot* posit that Rava's dictum applies only in that twenty-five-pupil scenario. *Tosafot* then identify the case where the prohibition applies: Town *A's* twenty-five pupils are currently instructed by a single *melammed*. Town *B* has two *melammedim*, each instructing a class of twenty-five. By sending their children to the neighboring town, the parents avoid hiring a teacher locally for twenty-five pupils. Instead, they can divide up the twenty-five, putting, say, thirteen in one group and twelve in the other. Rava's dictum disallows this cost-saving arrangement.<sup>54</sup> One could argue that the reason for this prohibition is because when the children of town *A* must travel to town *B* it causes the school in town *A* to close down,

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<sup>52</sup> R. Mosheh Feinstein, *Iggerot Mosheh, Hoshen Mishpat* 1:40.

<sup>53</sup> R. Solomon b. Isaac, *Rashi, Bava Batra* 21a. R. Joseph Habiba (Spain, early 15<sup>th</sup> cent) also follows *Rashi's* line.

<sup>54</sup> *Tosafot, Bava Batra* 21a.

leaving that town without a school. By extension, when moving student from one town to another causes the local school population to fall below twenty-five, it undermines Yehoshua b. Gamla's ordinance and should be disallowed. Suppose, however, that the school in town *A* has twenty-eight pupils and the parents of three of the pupils want to have their children transported to town *B* and back for their education. Here, because the switching of the pupils does not push the school population in town *A* below twenty-five, Yehoshua b. Gamla's ordinance is not undermined. No objection should therefore be raised.

Taken together, *Rashi's and Tosafot's* commentary on Rava's dictum result in a leniency for the modern scene. This leniency is that if switching children to a different neighborhood does not disrupt the school of origin, and, the pupils who are bused neither travel significantly longer nor are subject to greater dangers in travel than their local counterparts, Rava's dictum is not violated. If switching the children to a school outside their neighborhood does not violate Rava's dictum, the school that takes these children in should not face any reduction in their allocation.

Also relevant to the issue at hand is a query put to R. Moshe Feinstein whether boys attending a day school in Sunderland, England could be taken out of that school and bused to a day School in Gateshead. The parents' motive was both to get their children a better Torah education and to put them into a more religious milieu. The downside, however, was that withdrawal of the children would leave the Sunderland school with so few pupils that it might be forced to close. If it did, Yehoshua b. Gamla's ordinance that each town should have its own school would be undermined. In his ruling, R. Feinstein drew a distinction between boys aged seven and those below this age. For boys below age seven, the additional gain in their Torah education by switching schools should not be anticipated to be very significant. This factor, combined with the recognition that long daily travel is very burdensome for children below age seven, led R. Feinstein to recommend that these children remain in the local school. For boys aged seven and older, the anticipated gains from the switch are much more significant and the children can handle long daily travel better. Accordingly, for this age group R. Feinstein felt

that the switch should be made, even at the expense of causing the local Sunderland school to close.<sup>55</sup>

What appears to emerge from R. Feinstein's analysis is that the long daily travel today for children to and from school may in some instances not subject them to danger, but only burden them. Other considerations may then allow them to be bused to a school from a different neighborhood.

From the above analysis a case can be made that a participating school should not lose on its per capita entitlement if some of its pupils reside in a different neighborhood.

## **(6) Parental Involvement in the Torah Education of their Children**

In this section we will show that to qualify as a participating school a school must require its parent body to be involved in their children's Torah education. The case for parental involvement begins with the biblical verse "And you shall teach them to your children..."<sup>56</sup> Talmudic explication of this verse makes it a biblical duty for a father to teach his son Scripture (*Mikra*).<sup>57</sup> Several considerations, however, point to a much broader *Talmud Torah* (teaching Torah) duty for the father. For one, *Shulhan Arukh* understands the Talmudic passage to refer to the obligation to hire a tutor for his son. It is here that the obligation extends only to *Mikra*. With respect to the duty to spend time with his son, however, the father's duty extends beyond *Mikra* to *Mishna* and Talmud as well.<sup>58</sup> Second, *Ramah* posits that when the Talmud limits the father's responsibility to *Mikra*, it refers to when circumstances press him (*d'dehika leib sha'ata*). Otherwise he must teach his child *Mikra*, *Mishna*, *Halakhot* and *Aggadot*.<sup>59</sup>

What the extensive *Talmud Torah* duty of the father vis-à-vis his son tells us is that Yehoshua b. Gamla's ordinance to establish com-

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<sup>55</sup> R. Moshe Feinstein, *Iggerot Mosheh, Yoreh De'ab* 3:75.

<sup>56</sup> Deuteronomy 11:19.

<sup>57</sup> *Kiddushin* 30a.

<sup>58</sup> *Sh. Ar.*, op. cit., 245:6. R. Pinhas ha-Levi Horowitz (Frankfort, 1730–1805, *ha-Makneh*, *Kiddushin* 30b) interprets *Rambam* (*Yad, Talmud Torah*, 1:7) to concur with *Sh. Ar.* See, however, *Kesef Mishneh*, *ad loc.*

<sup>59</sup> R. Meir Abulafia, quoted in *Tur*, op. cit., 245.

munal schools was never meant to supplant the father's Talmud Torah duty. To be sure, Torah education law, as described above, calls for a very long school day, but whenever the child is not under the tutelage of the *melammed*, the father's *Talmud Torah* duty should fill the gap. Reinforcing that duty is the dictum that it takes no less than constant Torah study to prevent the forgetting of Torah one has already learned.<sup>60</sup> Unless he minimizes the time his child spends away from Torah study, the father bears some responsibility for the Torah the child forgets by idling outside of school.

Let's now apply the father's *Talmud Torah* duty vis-à-vis his son to the modern scene. It is obvious that a child now spends much more time outside the formal setting of school. The flip side of this is that the father's *Talmud Torah* duty vis-à-vis his son is operative today much more so than in former times. How this duty translates in practical terms will depend on the father's background and financial status, and the time constraints under which he operates. But, at a minimum, this duty gives the father a responsibility both when school is in session and when it is not. When school is in session the father must ensure that his child does his homework and reviews his lessons. When school is not in session, such as on Shabbat, holidays and summer vacations, the father must ensure that *Talmud Torah* is an important part of his child's routine.

Let's consider the possibility that, from a halakhic perspective, a mother too must take responsibility for the *Talmud Torah* of her children. For one, the duty to train and educate the child to perform *mitzvot*, i.e., the *mitzvah* of *hinukh*, according to a number of authorities, devolves on the mother as well.<sup>61</sup> Accordingly, the *hinukh* duty tells the mother she must ensure that her child does his homework. Reinforcing this duty is the reality that a child is typically together with his mother much more than with his father. This, according to R. Isaiah ha-Levi Horowitz (Poland, 1565–1630) makes it the duty of the mother to correct the child's misconduct much more so than the

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<sup>60</sup> *Yad*, op. cit. *Talmud Torah* 1:10. For sources and implications for specific conduct in the prohibition not to forget the *Torah* one has studied as well as from the affirmative duty to remember it, see R. David Pollack, *Be-Torato Yehege*, pp. 183–198.

<sup>61</sup> See R. Samuel b, Nathan ha-Levi Kolin (Bohemia, 1720–1806), *Mabat-zit ha-Shekel* to *Shulhan Arukh, Oraḥ Hayyim*, 343 note 1.

father.<sup>62</sup> Ensuring that homework is done certainly falls under this category.

Recall *Ramah's* dictum that if “circumstances don’t press him” a father must go beyond *Mikra* and theoretically teach his son the entire Torah. Commenting on *Ramah's* dictum, *Hazon Ish* understands him to say that the father’s duty to go beyond *Mikra* is not a *Talmud Torah* duty emanating from “And you shall teach them to your children...” Instead, that duty is an aspect of the rabbinical duty of *hinukh* incumbent upon a father to educate his child in the performance of all his duties as a Jew, which, of course, includes the duty to study Torah.<sup>63</sup>

Recall the contention earlier, on the testing requirement standard that much of the secular curriculum in elementary school should be regarded as either preparation for or an aspect of Torah study. Parental involvement in the Torah education of their child should therefore include the secular part of the program as well.

Is parental participation in the education of their children implicit in Yehoshua b. Gamla’s ordinance? Yes. Consider that the driving force behind Yehoshua b. Gamla’s ordinance was the neglect of the Torah education of orphans. It therefore stands to reason that the intention of the ordinance was not to plug a gap in one area and at the same time create a void elsewhere. The call to establish a school in each town was, therefore, not meant to signal a total transfer of responsibility for the Torah education of the youths from parents to the school. Today, when the time spent in school is much less than that prescribed in the codes, the gap parents need to fill is much wider than in the time of Yehoshua b. Gamla. To prevent his vision for Torah education from becoming distorted, the requirement for parental participation must not be left to self-enforcement. Instead, it should be a standard that the community demands of participating schools. In doing so, the community shows fealty to Yehoshua b. Gamla’s vision and helps dispel the notion that schools relieve parents of the responsibility to educate their children.

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<sup>62</sup> R. Isaiah ha-Levi Horowitz, *Shelah, Sh’ar ha-Otiot, ot Derekh Eretz*.

<sup>63</sup> R. Abraham Yeshayahu Karelitz (Israel, 1876–1953), *Hazon Ish, Yoreh De’ab, Hilkhot Melammedim* 152.



## (7) Compliance with the Law of the Land (*Dina D'Malkhuta Dina*)

Finally, halakhah insists on compliance with the government's laws as a precondition to granting the school a charter, and with the rules it sets in connection with aid programs.<sup>64</sup> This operational requirement, although not derived from Yehoshua b. Gamla's ordinance, should not be left to self-regulation. There are a number of reasons for this. Yeshivot and Day Schools receive government aid. Dishonest dealings with the government make the Yeshiva guilty of not only theft but profaning the Name of G-d (*hillul ha-Shem*).<sup>65</sup> The *dina d'malkhuta* standard has a positive message too. It makes a statement to society at large that honesty is the bedrock of our dealings with everyone, not just with our co-religionists.

### Torah Education Subsidy Fund

In this section we will briefly describe a subsidy program for the Yeshivot to adopt and compete on the basis of the standards outlined above.

The first step for the proposal is the setting up of a conference of rabbis and lay leaders of the local community to establish minimum

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<sup>64</sup> For a summary of the various views on the halakhic principle of "the law of the kingdom is the law" (*dina de-malkhuta dina*), Cf. Aaron Levine, *Moral Issues of the Marketplace in Jewish Law* (Brooklyn, New York: Yashar Books, 2005), pp. 6-7.

<sup>65</sup> R. Tzvi Hirsch Ashkenazi (Germany, 1660–1718) shows that the Torah prohibits theft not out of consideration of the victim, but because dishonest conduct debilitates the perpetrator's character and sullies his soul. Hence, dishonest conduct directed at any human being is equally prohibited (*Hakham Tzvi* 26). When the victim is a Jew, discovery that the perpetrator is a fellow Jew presumably does not incite the offended party to rail against his own religion and call it a false belief. In contrast, when the victim is a gentile, said discovery could incite the non-Jewish victim to disgrace the Jewish religion and call it a false belief system. Accordingly, in the latter instance, the offender compounds the sin of theft with the additional sin of *hillul ha-Shem* (R. Bahya b. Asher, Saragossa, 13<sup>th</sup> Cent., *Rabbeinu Bahya al-ha-Torah*, Leviticus 25:30).

halakhic standards for the neighborhood elementary schools. Those schools would then be asked to accept these standards and submit to an audit to ensure they are being adhered to. Such acceptance would designate the school as a participating school. The next step is the establishment of a Torah Education Subsidy Fund for the participating schools. Solicitations for this fund would be made to the community at large on a continuous basis. This fund would distribute on a monthly basis to the participating schools. Initially, the distribution would be made on the basis of enrollment figures alone. But subsequent allotments would adjust the subsidy, to some degree, based on **changes** in enrollment figures. This adjustment would be designed to provide **special** rewards for a school that experienced very significant growth in enrollment and also provide downward adjustments per capita if the school experienced a decline in enrollment.

My proposal finds precedent in the subsidy program the Kehillah Jewish Education Fund established in Chicago. Founded by Dr. Yosef Walder, the Kehillah fund makes monthly allocations to Chicago's eight orthodox elementary schools. Allocations are based on enrollments of the schools. The fund solicits the Chicago Jewish community at large to make monthly contributions to the fund. In 2004, the first year of its operation, 214 families contributed to the fund and the program distributed a total monthly allotment of \$36,000 divided up among the eight Chicago elementary schools. George Hanus' Superfund for Jewish Education and Continuity, which also operates in the Chicago area with its own program, boosts the Kehillah fund with a matching grant.<sup>66</sup> Since the program's inception, both the number of contributors and the monthly allocation figures have risen. In 2007, the statistics showed 640 families contributing, with the monthly allocation figure approximately \$47,000 divided up among nine schools. The Kehillah Jewish Education Fund sets no requirements or standards for orthodox elementary schools to qualify.<sup>67</sup>

My proposal differs significantly from existing programs in that it ties the subsidy to the acceptance and enforcement of a standard. Increasing enrollment therefore is a school's way to demonstrate the

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<sup>66</sup> Micah Greenland, "Who Should Pay for Jewish Education?" *Jewish Action*, Fall 5766/2005, p. 28.

<sup>67</sup> Telephone interview and e-mail correspondence with Nesanel Siegal, the administrator of the program.

superiority of its program over those of competing schools. An increasing Torah Education Subsidy allocation is no less a trophy a participating school can display to potential donors of the worthiness of its programs.

For financially strapped schools, attracting an increasing Torah Education Subsidy allocation carries, therefore, financial weight considerably beyond the value of the subsidy itself. Within the Torah Education Subsidy Program, a school should stretch its resources to achieve higher performance and satisfaction among its clientele.

The brightest prospect for the Torah Education Subsidy Program is that it will spur on innovation in the form of new entry. New entry could take on different forms. One is the formation of new schools. Because the Torah Education Subsidy is based initially on enrollment figures, a new school could count on the Fund to finance a significant component of its operating budget. But far more important, the Torah Education Subsidy encourages educational entrepreneurs to enter into cooperative arrangements with established schools. New entry need not mean establishing a new school.

Without a doubt, as the benefits of competition unfold, the salaries of the personnel responsible for the success stories will increase, as schools compete for these personnel's services.

The importance of innovation for the Torah education of the youth is that it could bring about greater achievement of Torah educational goals. To reveal some possibilities here, let's show how the subsidy program spurs schools to compete on the basis of the standards.

### **Competition on the Basis of Standards**

(1) Requiring participating schools to set up a performance appraisal system for their teachers encourages experimentation in rewarding teachers for specified outcomes for their pupils. In this regard the work of educational economists, particularly Eric Hanushek in the public educational sector, is very relevant. The major finding is that school resources are not closely related to student performance. Thus, mandating smaller classes, increasing the requirements to become a teacher or increasing teacher salaries does not result in better

pupil performance. What does work is rewarding teachers for achieving specific pupil-performance goals.<sup>68</sup>

(2) In respect to requiring that parents participate in the education of their child, suppose the community requires parents to vouch that their child did his homework: School *A* decides to comply minimally with this standard. *A* satisfies the standard and its enforcement by requiring regular notes from the parents to the teacher that their child did his homework. School *B* goes further and promises parents to organize the class into groups and arrange for the parents on a rotation basis to spend, say, an hour in the evening with the assigned group of children and **help** them do their homework and/or review the day's lesson. School *C* adopts *B*'s program but also organizes this type of rotational system for *Shabbat* learning. Now, if parents find significant value added in the programs of schools *B* and *C*, the competition will force the higher standard on all schools.

## Conclusion

Our concern here has been a proposal designed to revive Yehoshua b. Gamla's vision for the Torah education of the youth. The core of our proposal is a set of standards for Torah elementary schools. These standards are either inherent in or consistent with Yehoshua b. Gamla's call for the community to take over both the running and the financing of schools for the youth. These standards were: performance appraisal for teachers; testing requirement for pupils; minimum enrollment and compulsory attendance; neighborhood schools; maximum class size; and parental involvement in the education of their children.

One final standard was that participating schools must agree to run their school in compliance with the law of the land (*dina d'malkhuta dina*). This requirement, although not derived from Yehoshua b. Gamla's ordinance, should not be left to self-regulation. By tying its subsidy to the enforcement of this standard, the community communicates to society at large that honesty is the bedrock of our dealings with everyone, not just with our co-religionists.

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<sup>68</sup> Eric Hanushek, "The Failure of Input-Based Schooling Policies," *The Economic Journal*, 113 (February, 2003), f. 64-98.

By tying the subsidy to the acceptance of standards, the Torah Education Subsidy Program motivates schools to compete based on standards. A school earns larger allocations by achieving higher enrollments. It gets, in turn, higher enrollments by getting a reputation that it outperforms other schools in the common standards participating schools agreed to. Given the financial straits schools find themselves in today, getting increasing allocations from the Torah Education Subsidy Program has financial significance considerably beyond the money received from the program. It is the school's way of convincing potential donors of its program's worthiness.

Under present arrangements, the existence of a number of alternative Yeshivot and Day Schools in a community almost guarantees that none of the schools will get the priority it deserves in the hierarchy of charity giving. Out of fear of charges of favoritism, Synagogues are unwilling to respond to the request by one of the institutions that it allow an appeal. To be sure, nothing prevents all Yeshivot in the community from joining together in a joint appeal in each Synagogue. But it is not likely to happen. For one, some of the schools might very well feel that they can do better going alone than sharing revenue with a whole number of other schools. Second, to pull this off much cooperative efforts between schools would be needed. The void created by this bottleneck allows other organizations, standing lower in the hierarchy of charitable causes, to step in and become part of the quota of appeals a Synagogue will typically make. Complicating matters further is that oftentimes one of a Synagogue's prominent members will be prevailed upon to run a parlor or mock parlor meeting in his home to benefit a particular Yeshiva. Once this person's friends have been corralled for its cause, they will be, to say the least, much less responsive in support of the other Yeshivot in the neighborhood.

The Torah Education Subsidy offers the prospect of catapulting the support of the Torah education of the youth to the priority it deserves. Once the neighborhood schools become participating schools and the Torah Education Subsidy Fund is set up, each Synagogue can be approached to run an appeal for the Torah Education Subsidy Fund. The case for such an appeal is that the money raised supports the Torah education of **all** the needy pupils in the neighborhood and

hence falls into the category of the highest-priority charity giving.<sup>69</sup> Moreover, because the participating schools have all adopted the community's standards, the contributions will foster competition among the schools to achieve ever higher standards.

The united appeal creates new avenues of receptivity to the message that support for the Torah education of the youth is the highest priority in charity giving. Once the system is set up, competition among the participating schools fosters the movement of tuition payments and charity dollars to the schools that can best achieve Torah educational outcomes. ❧

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<sup>69</sup> *Shulhan Arukh, Yoreh De'ah*, 249:16. Support for the Torah study of young children takes precedence over the support for Torah study of mature Rabbinical scholars (R. Yeshayahu Ya'akov Bloi, *Tzedakah u-Mishpat*, p.56, quoting R. Simeon b.Tzemah Duran, Responsa *Tashbetz*, *Yoreh De'ah* 167; R. Yitzhak Yaakov Weisz (Israel, 1902–1989), Responsa *Minhat Yitzhak*:2:39. See, however, *Mahari Asad, Yoreh De'ah* 315 and 3:243). This priority holds even if the children are not desperately poor and the support goes toward allowing them to study under comfortable conditions (*Tzedakah u-Mishpat*, op. cit., at 78).