

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CENTRAL RABBINICAL CONGRESS OF:

THE USA & CANADA, *et al.*,

Plaintiffs,

vs.

NEW YORK CITY DEPARTMENT OF
HEALTH & MENTAL HYGIENE, *et al.*,

Defendants.

Case No. 12-Civ.-7590

Judge Naomi Reice Buchwald

AFFIDAVIT OF DR. MARVIN SCHICK

MARVIN SCHICK, being duly sworn, deposes and says under penalties of perjury:

1. I am the author of the study, *A Census of Jewish Day Schools in the United States* (2009), that the New York City Department of Health, Commissioner Dr. Thomas Farley, and the authors of the study published in the Centers for Disease Control's *Morbidity and Mortality Weekly Report* utilized to estimate the number of Hasidic and Yeshiva children in New York City. This estimate was in turn used as a proxy for the number of children in New York City whose circumcision included Metzitzah B'peh ("MBP"). Unless otherwise stated I am fully familiar with the facts and circumstances set forth herein.

2. Because the purpose of the affidavit is to provide my opinion on matters related to Jewish schools and schoolchildren, I briefly set forth the following factual background about my own involvement with respect to Jewish education.

3. After obtaining a doctorate in political science from New York University, and while teaching at Hunter College, in 1965, I was among the founders and served as first president of the National Jewish Commission on Law and Public Affairs ("COLPA"). COLPA secured significant legal achievements protecting the legal rights of religious persons at the workplace, in schools, and in other settings.

4. Since 1974, I have served in a voluntary capacity as President of the Rabbi Jacob Joseph School (RJJ). RJJ was founded in 1899, and is the oldest continuously operating Jewish day school in the United States. There are currently four separate educational institutions operating within the RJJ family of schools.

5. I currently serve as a senior advisor to the Avi Chai Foundation, which has afforded me the opportunity to work on a number of projects to further Jewish education. Among those projects is the preparation and publication of *A Census of Jewish Schools in the United States*. While at Avi Chai, I have visited more than 400

Jewish yeshivas and day schools, which is approximately half of all such institutions in the United States.

6. My efforts on behalf of Jewish day schools also included an expert report and testimony as an expert witness on behalf of Westchester Day School before the Southern District of New York in the action *Westchester Day School v. Village of Mamaroneck*, 417 F. Supp.2d 477 (S.D.N.Y. 2006). The district court's decision in favor of Westchester Day School (which was affirmed by the Second Circuit at 504 F.3d 338 (2007)) referred to me as "an expert on Jewish education." 417 F. Supp.2d at 494, n.13.

7. I have reviewed Dr. Farley's affidavit and the study published in *Morbidity and Mortality Weekly Report*. It is my opinion that Dr. Farley and the study have understated the number of Hasidic and Yeshiva students in New York City. There are at least three reasons why this is so.

8. First, to estimate the number of Hasidic and Yeshiva children in New York City, Dr. Farley and the MMWR study used the data from Table 12 of my *Census of Jewish Schools* to calculate the percentage of the overall population of kindergarteners enrolled in Jewish schools who are Hasidic or Yeshiva students. The data in Table 12, however, reflects the aggregate K-12 enrollment in New York City Jewish schools. A "Key Finding" of the Census, however, was the explosive growth in Hasidic and Yeshiva schools over the prior decade. In particular, the Census found that there had been a 56% increase in Hasidic enrollment and a 34% increase in Yeshiva enrollment during that period. (Census, p. 1). Thus, the percentage of kindergarteners in Jewish schools in New York City in 2009 who were Hasidic and Yeshiva students is substantially higher than their percentage of the aggregate K-12 2009 Jewish school enrollment.

9. Second, in preparing my national census I treated schools and students affiliated with the Chabad movement (a particular Hasidic sect) as a distinct category from Hasidic and Yeshiva schools and students. There are important reasons to do so when considering Chabad schools across the United States. However, in New York City the Chabad schools and students share the characteristics of Hasidic and Yeshiva schools and students. By ignoring Chabad enrollment when compiling their estimates, both Dr. Farley and the MMWR study undercounted the number of Hasidic and Yeshiva students in New York City.

10. Third, the Census covers both male and female enrollment and all of the data reported aggregates both male and female enrollment across categories. However, there are a substantial number of families whose girls are enrolled in Yeshiva schools but whose boys attend Hasidic schools. To give the most prominent example, the largest Yeshiva girls school in New York City is Beth Jacob of Boro Park, which has approximately 2,000 girls enrolled in grades K-8. A very significant portion of those girls come from Hasidic homes, however, and have brothers who attend Hasidic schools. Thus, it is most likely that disaggregating the data would show a shift from Yeshiva schools to Hasidic schools among boys (relative to girls).

11. In an effort to create a more accurate picture of the Hasidic and Yeshiva enrollment among kindergarteners in Jewish schools in New York City, I went back to the underlying data used to create Table 12 of my Census. When using Kindergarten enrollment instead of aggregate K-12 enrollment, the relevant enrollment percentages for

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2009 5.3% for Hasidic schools, 22.5% for Yeshiva schools and 7.3% for Chabad schools. When adding Chabad students to the Hasidic enrollment and correcting for the shift from Yeshiva to Hasidic schools among boys, one obtains Hasidic enrollment in excess of 60% of the total.

12. There is one final point worth noting about the inherent limitations in using enrollment data as a proxy for live births, as Dr. Farley and the MMWR study have done. Enrollment data does not take into account (1) students in special education or special needs schools; (2) students who are home schooled; and (3) children who are born in New York City but whose families live elsewhere by the time they are ready to begin school. This last category includes Chabad families who are sent on missions across the world but who return to New York to give birth, and Orthodox (both Hasidic and Yeshiva) families that relocate outside of New York City due to the high cost of housing and other factors. By contrast, there are far fewer such families who relocate to New York City from elsewhere. Accordingly, in the aggregate there are considerably more Hasidic and Yeshiva births in New York City than suggested by enrollment data.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of November, 2012, at New York, New York.


MARVIN SCHICK

STATE OF NEW YORK
COUNTY OF New York

Subscribed and sworn before me this 29th day of November, 2012.


Notary Public

My commission expires on: 12/27/15.

