

# probing the Lawrence proposal:

A legal and political analysis

BY NATHAN J. DIAMENT

Over the past few months, a number of Orthodox parents in Lawrence, New York, initiated an effort to reduce their education costs by partnering with the local public school system. Initially, the proposal was

"The fear of overwhelming tuition in the future has caused my wife and me to discuss alternative forms of education. We read with much interest about a group of parents in Lawrence, New York, that is looking to create a program where kids receive their secular education in the public school system, and [parents would] only need to finance the religious aspects of their children's education. With tuition [being] so unmanageable—even for families where both parents make decent salaries—this is an option that needs to be considered."

Lawyer in Long Island, New York

Fact

*limudei kodesh* during another portion of the day. The most recent proposal as of this printing is to have students receive both their religious and secular education at their day school, but to have the secular studies program be, in effect, outsourced to the public school district. Secular studies would be taught by public school teachers at the day school. It is presumed that maintaining a religious studies program alone will cost a day school substantially less than sustaining a dual-curriculum program.

There are many concerns and implications regarding both proposals, which must be carefully weighed by parents, community leaders, halachic authorities and other stakeholders. The most obvious include the social environment that Orthodox youth would encounter in a public school setting and the degree to which the secular curriculum would need to be shaped to accommodate the religious sensibilities of Orthodox Jews. These concerns are most likely to be successfully addressed in locales such as Lawrence, and in other such public school districts, where there is a sufficient density of Orthodox population to warrant accommodation, if not control, of public school decisions. Still, even with a willing local school board and an astute Orthodox populace, there are legal and political challenges to be overcome.

Two US Supreme Court decisions decided over the last fifty years are most relevant here. In 1952, the Supreme Court considered a New York City "released time" program,<sup>1</sup> under which

public schools would release students, with their parents' permission, during the day to attend religious classes off-site. On the basis of the classes being held off-site and their full cost being paid from private funds, the Court distinguished this program from one it invalidated only four years earlier,<sup>2</sup> under the Establishment Clause of the First Amendment. Writing for the majority, Justice William O. Douglas stated: "When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions."<sup>3</sup>

While this precedent seems to give a wide berth to those who would forge a partnership with the public schools, a cautionary note comes from a decision rendered in 1994 when the Court invalidated the creation by New York State of a school district in the Satmar village of Kiryas Joel as a violation of the Establishment Clause.<sup>4</sup> The Court held that because the public school district was created exclusively to enable learning disabled Satmar children to receive a program of state-funded special (albeit secular) education, and because there was no evidence that the state would afford a similar accommodation to another religious community, ("the anomalously case specific creation of this district for a religious community leaves the Court without any way to review such state action for the purpose of safeguarding the principle that government should not prefer one religion to another, or religion to irreligion") the district violated the Constitution. Thus,


for Orthodox students to attend public school for their secular studies during one part of the day and undertake their

*Mr. Diament is the director of the Orthodox Union's Institute for Public Affairs. Based in Washington, DC, the IPA promotes the interests and values of the Orthodox community in the public policy arena through legislation, litigation and public advocacy.*

to the degree that Orthodox parents seek to have a separate track of classes created within a public school system—for either social or curricular reasons—this precedent at least begs the question of whether the public school authorities would afford such a separate track to other interested segments of their community.

Independent of these federal precedents stand state constitutions and laws. Many states—including New York—have “Blaine Amendments” or other proscriptions against state funds supporting religious activities, which are broader than federal provisions. Regarding the latter proposal (to have the public school district control the secular studies program on-site at the day school), this body of state law may be fatal to the plan.

Thus, there must be sufficient interest on the part of the public school authorities to overcome the cautionary instructions they will certainly receive from their attorneys who wish to minimize any exposure to a lawsuit—though such a suit is almost certain to be brought against any such program by an activist advocacy organization or disgruntled citizen.

What this legal landscape makes clear is that those in our community who pursue such a public-private partnership must be politically astute as well as flexible. Of course, the more populated a locality is by Orthodox citizens, the more local officials must seek ways to serve that segment’s interests, or risk removal from office. But even if such “power” is wielded by the community, proponents must realize that there are some programs that even willing public officials will not be able to undertake. In the end, the search for a solution may require a lengthy litigation process, sensitivity, flexibility, a sense of responsibility to the broader citizenry with whom the Orthodox share a public square and a fundamental sense of what is ultimately appropriate for our children’s growth and well-being. 

## Notes

1. *Zorach v. Clauson*, 343 US 306 (1952).
2. *McCullum v. Board of Education*, 333 US 203 (1948).
3. It is also worth noting that in the 2001 case of *Good News Club v. Milford Central School*, 533 US 98, the Court applied the equal access principle to permit religious after-school clubs to meet on-site in public schools so long as such facilities were being made available to a range of similarly situated groups (i.e., if the public school lets youth groups meet on-site after hours, it cannot exclude religious youth groups). Thus, conversely, public school authorities may be reticent in allowing Jewish religious studies classes to take place on-site after hours as it would then require them to make similar offers to a range of other groups.

4. *Board of Education of Kiryas Joel v. Grumet*, 512 US 687 (1994).