YOUNG ADVOCATES FOR FAIR EDUCATION

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Re: Submission of YAFFED's written comment concerning Family Court

Dear Counselors:

Please extend our sincerest gratitude to Senators Hoylman-Sigal and Brisport for the opportunity to address the Committees on Judiciary and Children & Families, and accept the attached written statement as YAFFED's comment with respect to the joint public hearing being held. As a leader in advocacy for better education in New York yeshivas, YAFFED is concerned about New York's Family Court and the seeming misunderstanding of the Compulsory Education Law evidenced in some Family Court decisions.

As YAFFED's attorney, and as a former attorney with the Family Court Legal Services division of the Administration for Children's Services in New York City, I have extensive experience in Family Court and a unique appreciation for the opportunity given to YAFFED to address the Committees as they endeavor to push forward critical improvements to New York's Family Courts.

YAFFED is deeply concerned that too often Justices are tempted to see harmony between the stated interests of a parent and the best interests of the child; treating these two interests as identical when they most certainly are not. It is our fervent hope that the Committees right this wrong and by so doing protect the constitutional rights of our children to receive a sound basic education.

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I thank you for your time and consideration and YAFFED is both willing and ready to discuss this matter further and provide any additional information it can to aid the Committees in this vital undertaking.

Respectfully,

/s/ Christopher Hazen

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YAFFED's Comment On Family Court And The Compulsory Education Law

"[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

Brown v. Board of Education, 347 U.S. 483, 493 (1954)

It is hard to imagine anyone having fallen under the jurisdiction of one of New York's Family Courts having a positive experience. Family Court is uniquely and inherently adversarial given the Court's scope and subject matter. Family Court addresses particularly sensitive, private, challenging and difficult issues, and its Justice's decisions will rarely go without criticism. Far too often however, this already difficult job is made harder by the seeming failure of the Court to fully appreciate the gravity of its decisions and potential ramifications at times. While Family Court can be much improved as an institution[1] in a great many ways, YAFFED offers its unique perspective on the matter on one important but often overlooked issue; the failure of the Family Court in some instances to uphold the Compulsory Education Law, and the harming of children and families relying on the Court's judgment as an unintended consequence of this miscarriage of justice.

One would hope that in the great state of New York, in the year of 2023, the idea that a child must be offered a sound basic education would be beyond cavil. Since 1895 New York has required that parents educate their children or send them to school for an education. Where parents decide to send their children to a private school, that school must provide an education substantially equivalent in quality and scope to that provided by local public schools. This 128-year-old statute is the Compulsory Education Law, and as the name suggests it applies to everyone across the state, equally, and without exception.

[1] The author avers that a wholistic approach to institutional reform in Family Court is necessary for success. It is therefore puzzling why the report of the Franklin H. Williams Judicial Commission would fail to consider any input from Child Protective Services (CPS) case workers or attorneys, given the substantial impact such cases have on Family Court dockets and resources, and on matters of social equity and policy.

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The Compulsory Education Law has been tried and has survived numerous challenges in the Courts.[2] The United States Supreme Court upheld laws like the Compulsory Education Law as valid.[3] The notion that access to a sound basic education is a child's right is further supported by case law[4] and a sound basic education is affirmatively recognized as in a child's best interests by the Family Court Act.[5] In fact, any parent that fails to provide their child an education meeting the requirements of the Compulsory Education Law faces legal consequences that include fines or imprisonment.[6]

Put simply, we as a state have decided long ago that it was indisputably in the best interests of our children that they receive a sound basic education, and that such an education include significant instruction in academic fields like English, mathematics, social studies and the sciences.[7] That presumption is conclusive, enshrined as it is in our legal system at all levels. It is a fundamental, irrefutable fact of modern-day life recognized by authorities whose determinations ought to be binding on Family Court Justices.

Despite the fact that society has long recognized that learning is good for children and that children learning is good for society, too often Family Court Justices pay short shrift to educational considerations and put the convenience and capricious desires of one parent over the best interests of the child they are supposed to protect.

The experiences of Ms. Beatrice Weber, YAFFED's Executive Director offer an instructive if disturbing example, and should serve as a cautionary tale against ignoring this issue. Ms. Weber fought the New York State Education Department (NYSED), the New York City Department of Education (NYC DOE), and indeed Family Court itself, for years to ensure that her son received a sound basic education. Her son's school, which she was forced to accept as part of a Family Court approved custody agreement, Yeshiva Mesivta Arugath Habosem (YMAH), did not provide the instruction mandated by the Education Law, and provided little to no instruction in English, mathematics, social studies, or any science. When Ms. Weber became aware of this fact, she obtained legal counsel and filed a complaint with NYC DOE and NYSED, seeking an order that the school provide the substantial equivalent to a sound basic education they were required to under §3204 of the Education Law.

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[2] As an example, *People v. Donner, et. al.*, 199 Misc. 643 (1950), *aff'd* 302 N.Y. 857 (1951) made clear that even religious schools are bound by law to provide the minimum degree of education required by the law. *See also Blackwelder v. Safnauer,* 689 F. Supp. 106 (N.D.N.Y., 1988) and *Matter of Ronald Currence,* 42 Misc. 2d 418 (Fam. Ct., Kings Cty., 1963).

[3] *See* for example *Everson v. Board of Educ. of Ewing,* 330 U.S 1 (1947) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

[4] *See Campaign For Fiscal Equity, et. al. v. New York*, 86 N.Y.2d 307 (1995) and *Campaign For Fiscal Equity, et. al. v. New York*, 100 N.Y.2d 893 (2003).

[5] Article 10 of the Family Court Act makes educational neglect a cause of action that may be brought by child protective services against parents failing to educate their children as required by the Compulsory Education Law.

[6] *See* Education Law §§ 3212 and 3233 and *People v. Donner, supra.*

[7] *See* Education Law §§ 801, *et. seq.* and 3204.

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It would take years of administrative wrangling between Ms. Weber, NYC DOE, and NYSED, culminating in litigation before NYC DOE would arbitrarily and capriciously claim that YMAH provided a satisfactory quality of education. NYSED, having learned its lessons, stepped in to overturn NYC DOE and found the school to be out of compliance with §3204's requirements.[8]

After years of effort, litigation, and armed with a list of alternative schools and a factual finding underpinned by evidence from a government agency charged with substantial expertise at enforcing the Education Law in hand, Ms. Weber returned to Family Court. Her case should have been open and shut; YMAH did not meet the Compulsory Education Law's minimum requirements, and thus as an operation of law it was *per se* against her son's best interests to be consigned to a sub-standard education. He needed to go somewhere else. She as the custodial parent certainly didn't want her son to be burdened by a school not interested in educating him, and by this point YMAH itself no longer wanted her son to attend.

Nonetheless, her son's father insisted that YMAH was the only acceptable school and, inexplicably ignoring an administrative agency's determination where deference to it was due, the Justice in her case ordered that her son continue at YMAH. When Ms. Weber objected, she was ignored. When the school itself objected, it was ignored, and when YMAH continued to ignore the Court's order the Justice didn't immediately consider alternatives but instead demanded YMAH appear and explain why it was refusing the order.

That Justice's order should never have been issued. It ostensibly required Ms. Weber to violate not only her son's constitutionally protected right to an education, but put her in the position of being required to violate statutory law that came with a penalty of fines and jail time. It ignored both binding precedent from higher courts, and the legislative intent behind the statutory schemes of the Education Law and the Family Court Act. There is no conceivable way by which that order served the child's best interests. It actually required a child's harm at the bequest of a parent and exposed a custodial parent to legal culpability. Elementary separation of powers analysis tells us that no Court has authority to mandate a party violate clear and unambiguous statutory law, but effectively Family Court did exactly that.

Unfortunately Ms. Weber's experience is far from unique. While in her case her attorney was eventually able to get her son into a more appropriate educational setting, the years' long fight was utterly unnecessary and uncalled for, and too many parents in similar positions to Ms. Weber do not have her resources or her tenacity.

The problem appears to be that Family Court Justices are either unaware of what legally constitutes the best interests of a child, or of the Compulsory Education Law generally speaking. The solutions should be simple enough; requiring Family Court Justices to receive appropriate training on the Compulsory Education Law, requiring that they review custody arrangements to make sure that the child's educational needs are being met and that the child is attending a school

[8] *See Weber, et. al. v. New York State Educ. Dept, et. al.*, Index. No. 905413-21, Albany Cty. Supr. Ct., 2022), NYSED Commissioner Determination No. 17,983 (April 21, 2021), Commissioner's Decision on Remand (October 6, 2022).

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that takes education seriously enough to meet minimum requirements, and establishing a legally conclusive presumption that if a child's school fails to meet these legally mandated minimums, that it is in their best interests to attend a different school.

None of these solutions are groundbreaking; they are in fact already the status quo whether recognized or not. Implementing them would make a very real, very positive impact on the life of children that through no fault of their own find themselves the subject of a custody proceeding, and on society generally. YAFFED therefore calls upon the committees and all well meaning parties to advance legislation codifying a conclusive presumption that it is in a child's best interests to attend a school that complies with the Compulsory Education Law, and to take such other steps as may be deemed necessary or beneficial to best train and educate Justices on matters of education. It is disappointing that such additional steps are necessary to make clear to Family Court jurists that which the rest of us intuitively understand and know, but they do seem a necessary and relatively simple precaution to upholding the law.

On behalf of YAFFED,

Christopher Hazen

Attorney and Counselor at Law