

**JEWISH BOARD OF ADVOCATES FOR CHILDREN. INC.**

**POSITION PAPER TO THE  
NEW YORK STATE LEGISLATURE  
ADVOCATING CHILD PROTECTION LAWS  
FOR NONPUBLIC SCHOOLS**

February 2009

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## **About Us**

The Jewish Board of Advocates for Children, Inc. (JBAC) is a new non-profit corporation founded in New York State in 2008. The founders recognize a need for a new voice to address the pressing issues of the day in yeshiva and nonpublic school education. Those issues include: the health, safety and welfare of all children; the spiraling cost of religious and nonpublic school education; and the quality of education.

We are both a think tank and activist organization. Among our initial accomplishments, when we were known as the N.Y.S. Yeshiva Parents Association, was our successful advocacy for a new law in New York State authorizing all nonpublic schools to fingerprint and background check their prospective employees. Our schools can now avoid hiring convicted sex offenders and other dangerous persons who should not be working near children. This law became effective July 1, 2007.

Our activities include multi-disciplinary conferences, attended by professionals, community leaders, and all interested persons who possess a fervent wish to make a better world for our children. We seek practical solutions to contemporary challenges.

Our Officers, Executive Committee members, and rabbinic panel members are comprised of individuals with strong backgrounds in law, medicine, mental health, education, parenting, mentoring, and the Jewish religion.

The Jewish Board of Advocates for Children respectfully presents this Position Paper to the New York State Legislature.

## **Executive Committee**

**Elliot B. Pasik** is a trial and appellate attorney in private practice at 366 Pearsall Avenue, Cedarhurst, Long Island, N.Y. 11516, (516) 371-2800, where he specializes in serious personal injury and general commercial litigation. He is a graduate of Clark University, Worcester, Mass. (B.A.); and, Yeshiva University's Cardozo School of Law (J.D.). He additionally studied at Yeshiva Ohr Somayach, Israel. He is a member of the Education and the Law Committee of the Association of the Bar of the City of New York. He is president and co-founder of the Jewish Board of Advocates for Children, Inc. (JBAC). In 2005, he wrote letters to New York State legislative leaders, resulting in the passage of legislation authorizing nonpublic schools to fingerprint and background check their prospective employees. He is also the original proponent and drafter of two Resolutions of the Rabbinical Council of America (RCA), which endorse mandatory child protection laws for New York's nonpublic schools. He and his wife and six children reside in Long Beach, Long Island, N.Y. He may also be reached at [efbasik@aol.com](mailto:efbasik@aol.com).

**Mrs. Sherree Belsky** resides in Lawrence, Long Island, N.Y., with her husband. She is the mother of four, and grandmother of seven. She is the daughter of an Auschwitz survivor; and the daughter-in-law of the late Rabbi Yehoshua Yitzchok Belsky, a Torah scholar who was a member of the notable family that saved 1,200 Jews in the forests of Novgorodok, Poland during the Holocaust. Mrs. Belsky is Director of Kids Count Foundation, a nonprofit organization she founded to raise funds to assist at-risk teens; help pay for their drug rehabilitation; and return them to school. She has also been highly active in mentoring children, having been certified as a family coach by the Academy for Family Coach Training. She has published numerous articles in her local paper under the headline, "Parents at Risk". Her work experience includes office management and bookkeeping in the accounting and insurance industries. She is a vice president and co-founder of JBAC.

**Dr. Asher Lipner, Ph.D.** obtained his doctorate in clinical psychology from Adelphi University's Institute of Advanced Psychological Studies in 2004. He is an ordained orthodox rabbi, having graduated with a Master's degree in Talmud and Rabbinics from the Beth Medrash Govoha Rabbinical School in Lakewood, N.J. Since 2000, Dr. Lipner has worked for Ohel Children's Home and Family Services in various capacities. Since 2004, he works with the trauma team to provide clinical services for survivors of sexual abuse and their families. He was recently honored by the New York Jewish Week as a local hero for his community activism, after organizing a national conference on sexual abuse in the orthodox Jewish community. The September 2008 conference, held in Brooklyn, N.Y., brought together survivors, clinicians, advocates, rabbis, legislators, and law enforcement officials, to begin a process of working together to confront the severe problem of child sex abuse. He is a native of San Francisco, and currently resides in Brooklyn, N.Y. He is a vice president and co-founder of JBAC.

**Moshe Fessel, Esq.** is the owner and moderator of Five Towns Shuls (FTS) and Five Towns Jewish Community (FTJC) Yahoo groups, which boast 15,000 subscribers. Mr. Fessel created the sponsorship program for FTS/FTJC, raising thousands of dollars for Rofeh Cholim Cancer Society. He is a graduate of Columbia Law School, and has worked as an attorney at Sullivan & Cromwell, LLP from 2001 through 2008.

**Mrs. Bracha Goetz, M.A.,** is a mother and grandmother, and with her husband, resides in Baltimore, Maryland. She is a popular writer and speaker in the Jewish world, and has been published in the Jewish Press, Jewish Observer, and Chabad.org. She is the author of eight children's books, an editor of books for women, and the Mentoring Coordinator at Jewish Community Services in Baltimore. She has long been involved in child abuse

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Maury Kelman, **Esq.** received rabbinic ordination from Yeshiva University's Rabbi Isaac Elchanan Theological Seminary. He is a graduate of Osgoode Hall Law School in Toronto, and has pursued graduate studies in Jewish philosophy and English literature. He is the former Assistant Rabbi at The Jewish Center, West 86<sup>th</sup> Street, in Manhattan; and the former Rabbi and founder of Kehillat Morah in Jerusalem. He is the Chairman of Kedma, a Jewish student organization in Israel and the United States; and he oversees an adult education program at Congregation Ohab Zedek, Manhattan. He has worked as an attorney at a prominent Manhattan law firm. He currently works for an investment firm.

Dr. Nachum **Klafter**, M.D., is Director of Psychotherapy Training at the University of Cincinnati Psychiatry Residency Training Program. Dr. Klafter received his M.D. from the State University of New York at Buffalo. He completed his specialty training in psychiatry at Thomas Jefferson University Hospital in Philadelphia, where he also served as Chief Resident. Dr. Klafter maintains a private practice in psychoanalytic psychotherapy and psychoanalysis. He is the Vice President of the Cincinnati Hebrew Day School Board. He is an active member of the Nefesh International network of Orthodox Jewish Mental Health Professionals. Dr. Klafter's interest in child advocacy comes from his experiences as a psychotherapist and psychoanalyst, through which he has learned in intimate detail the tragic long-term impact of child sexual abuse on its victims. He resides in Cincinnati, Ohio with his wife and four daughters.

Perry **Schafner**, LCSW-R, is a licensed clinical and certified school social worker, and a certified chaplain. He is a graduate of the University of Chicago (B.A.); Yeshiva University's Wurzweiler School of Social Work (M.S.W.); Hebrew College (M.A.); and C.W. Post, Long Island University (P.D., School Administration). He has semicha (rabbinic ordination) from Rabbi Dr. Moshe Tendler of Yeshiva University. He also holds state certification in school and district supervision, and served as principal of a specialized yeshiva high school for teens with substance abuse addictions. He is a past Director of the Hillel Foundation at the University of Wisconsin; former Rabbi of Congregation Bachurei Chemed of Long Beach, and of the American Congregation of Austrian Jews in Manhattan. He is an active member of the Yeshiva Counseling Network, and one of the founding members of the Orthodox Union/Board of Jewish Education Safe Schools Committee, where he was involved in developing uniform substance abuse education, prevention, and intervention policies and procedures for the

recently formed Safe Schools Yeshiva Network. He currently provides school social work services in yeshiva high school settings, including, Hebrew Academy of Long Beach/DRS High School for Boys; Rambam Mesivta High School; and Hebrew Academy of Nassau County High School; he additionally maintains a private practice in Long Beach and Hewlett, Long Island, N.Y.. He resides in Long Beach, with his wife and four children.

**Chaim Shapiro, M.Ed.**, holds a Master's degree in Education from Loyola University, Chicago, and finished all but his dissertation in the Institutional Leadership and Policy Studies Ph.D. program at the University of California, Riverside Graduate School of Education. He has 14 years of progressive experience in Jewish education and administration. He resides with his wife and daughter in Woodmere, Long Island, N.Y.

**Dr. Vivian Skolnick, Ph.D.**, is a clinical psychologist and psychoanalyst in private practice for thirty years, specializing in psychotherapy, psychoanalysis, and marital therapy. In her early practice, she was head of the withdrawal program of the State of Illinois Drug Program (co-sponsored by the University of Chicago). She is a board member of Nefesh International, the network of orthodox Jewish mental health professionals. Dr. Skolnick is on the faculty of the Chicago Center for Psychoanalysis. Her papers have been published in professional journals, and she is the author of a soon-to-be published book, *Biblical Path to Psychological Maturity – Psychological Insights Into The Weekly Torah Readings*. Dr. Skolnick has been deeply involved in child abuse prevention in Illinois and nationally.

### **Rabbinical Committee**

The Executive Committee has a constant dialogue with many rabbis, and among them are these Rabbinical Committee members:

**Rabbi Yosef Blau, M.S.**, graduated Yeshiva University, where he received his B.A.; rabbinic ordination from the Rabbi Isaac Elchanan Theological Seminary; M.S. from the Belfer Graduate School of Science. He has served as a Rebbe and Associate Principal of Maimonides School in Brookline, Mass., 1965-1967; Rebbe and Principal of Yeshiva High School of the Hebrew Theological College, Skokie, Illinois from 1967-1970; Principal of the Jewish Educational Center, Elizabeth, N.J., from 1970-1977, and Mashgiach Ruchani (Spiritual Director) of R.I.E.T.S. and Yeshiva College since 1977. Rabbi Blau has been National President of the Religious Zionists of America since 2005. He was also associated with Hanhalat Artzit Bnei Akiva from 1959-60; served as National President of the Yavneh National Association of Religious Jewish Students from 1963-1964; and National Vice President of the Torah U'Mesorah Association of Hebrew Day Schools Principal Council from 1975-1977. Rabbi Blau has been a member of the Executive Orthodox Caucus since 2002, and a member of the Orthodox Forum since 1989. He is the author of many articles on Jewish thought.



**Rabbi Mark Dratch** served as a congregational rabbi in Stamford, CT for 22 years. He is currently chairman of the Task Force on Rabbinic Improprieties of the Rabbinical Council of America (the RCA is the world's largest orthodox rabbinic organization, constituting more than 1,000 modern and centrist orthodox rabbis); and is a former RCA vice-president. He is a member of the Clergy Task Force on Abuse, Jewish Women International; a member of the Jewish Advisory Committee of the FaithTrust Institute; and a member of the Editorial Board of the Journal of Religion and Abuse. He teaches at Yeshiva University in New York City. He is the founder of JSafe: The Jewish Institute Supporting an Abuse-Free Environment. The JSafe web site contains many articles authored by Rabbi Dratch addressing the Jewish view on children's rights, abuse, and related issues.

**Rabbi Chaim A. Wakslak, Ph.D.**, holds rabbinic ordination from Yeshiva Torah Vodaath, Brooklyn, and has been the spiritual leader of the Young Israel of Long Beach synagogue (Long Island, N.Y.) since 1985. Rabbi Wakslak holds a Ph.D. in clinical psychology from Hofstra University, and is currently Clinical Director at HASC Center in Brooklyn. In addition, he is a consultant to the N.Y.S. Department of Education, and the N.Y.S. Department of Disability Determinations. He has previously served as Clinical Director and Administrator of the Brunswick Physical Medicine and Rehabilitation Hospital in Amityville, N.Y.; and served as a psychologist at Bais Ezra/Ohel. Rabbi Wakslak received a Medallion Award for rabbinic service at the 1998 Centennial Dinner of the Union of Orthodox Jewish Congregations of America. The first meeting of JBAC (then known as the N.Y.S. Yeshiva Parents Association) was held at the Young Israel of Long Beach, and covered by the New York Jewish Week (Friedlin, "Yeshiva Parents Want Their Say", Feb. 26, 2006).

**Rabbi Allen Schwartz, M.A.**, is spiritual leader of Congregation Ohab Zedek, located in the Upper West Side neighborhood of Manhattan, since 1988. He is an alumnus of Yeshiva College and received his Master of Arts degree in Bible, Rabbinics and Halacha (Jewish law) from Yeshiva University's Bernard Revel Graduate School, where he continues to work on his doctoral thesis on Rashi's methodology. Rabbi Schwartz was granted rabbinic ordination from the University's affiliated Rabbi Isaac Elchanan Theological Seminary. He currently holds the Raymond J. Greenwald Chair in Jewish Studies at Yeshiva University, where he has taught since 1983. Rabbi Schwartz serves on the executive board of the Rabbinical Council of America and has also served as President of the Council of Orthodox Jewish Organizations of Manhattan's West Side. Rabbi Schwartz also teaches the seventh and eighth grades at Manhattan Day School. He has lectured extensively for the Board of Jewish Education of New York at many schools. Rabbi Schwartz has published curricula on Biblical themes for Jewish day schools nationally. In March 2007, Rabbi Schwartz's synagogue hosted a forum addressing the child abuse problem that was co-sponsored by the Union of Orthodox Jewish Congregations of America, and the Rabbinical Council of America. Rabbi and Alisa Schwartz have six children and three grandchildren.

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**NEW YORK STATE NEEDS STRONG, TOUGH  
LAWS PROTECTING ITS ONE-HALF MILLION  
NONPUBLIC SCHOOL CHILDREN**

Elliot B. Pasik, Esq.

*A janitor with a past rape conviction faces sexual abuse and other charges for allegedly hugging and kissing an 11-year-old girl at a religious elementary school. N.Y. Daily News, "Nab Janitor in Grope of Student", September 19, 2003.*

*A convicted pervert who somehow got a job teaching math at Brooklyn's prestigious (religious school) was busted yesterday for ordering 'extraordinarily violent' kiddie porn, prosecutors said. N.Y. Daily News, "Bust Teacher on Porn; Feds: Trolled Net for Kids Sex Vids", March 9, 2004.*

*Janitor with a history of heroin convictions and reckless behavior working at Manhattan religious school allegedly rapes 13-year-old girl. N.Y. Post, March 30, 2003, p.29.*

*Convicted sex offender, working at church school, sexually molests 8-year-old boy. Alvin Melendez v. Roman Catholic Archdiocese, N.Y. Law Journal, Feb. 27, 2001 (Sup. Ct., N.Y. Co.), *aff'd* 300 A.D.2d 162 (1<sup>st</sup> Dept. 2002), *lv den* 100 N.Y.2d 511 (2003).*

*"(There are) abusive teachers and rabbis in the schools", Brooklyn Assemblyman Dov Hikind, quoted in, Vitello, "Sexual Abuse Complaints Subpoenaed", New York Times, November 13, 2008.*

**POINT I: THERE IS A CRITICAL NEED FOR LEGISLATION MANDATING  
EMPLOYEE FINGERPRINTING IN NEW YORK'S NONPUBLIC SCHOOLS**

**Introduction**

The Jewish Board of Advocates for Children, Inc. is a newly organized grassroots organization comprised of educators, physicians, mental health therapists, attorneys, and other professionals and community leaders dedicated to the safety and welfare of all children, and the right of each child to a safe and secure environment at home and school.

We write to express our support for legislation requiring the fingerprinting and national criminal history background checks of all nonpublic school employees in our State. In this manner, our nonpublic schools, educating 500,000 children, can avoid hiring convicted sex offenders and other dangerous persons with criminal histories who should not be working near children - and the above quoted crimes, and others like them, can be avoided.

The proposed legislation would amend Education Law Sects. 305(30) and 3001-d, which became effective July 1, 2007 (Laws of New York, 2006, Chapter 630). These statutes authorize - but do not require - nonpublic schools to fingerprint their prospective employees.

The recently enacted Educ. Law Sects. 305(30) and 3001-d were necessary because since 1937, it had been illegal for nonpublic schools to fingerprint their employees. Labor Law 201-a prohibits private employers (except for hospitals) from fingerprinting their employees, "[e]xcept as otherwise provided by law".

*Starting in 2005, it was our organization (then known as the New York State Yeshiva Parents Association) that was the original and successful proponent of these new laws which, for the first time since 1937, allow our nonpublic schools to screen their employees through fingerprinting.*

Our advocacy continued, and subsequently, in the 2007-2008 legislative session, Senator Dean Skelos introduced a bill, S.4707-A, that would make fingerprinting *mandatory* for prospective employees of nonpublic schools. The Senate approved that bill on June 19, 2007, by a 60-1 vote. The identical Assembly bill, however, A.8581-A, introduced by Assemblyman Harvey Weisenberg, was not reached for a vote. Both bills were then referred to the Education Committee of each house.

For the reasons that follow, we respectfully urge that in the current legislative session, bills be introduced in the Senate and Assembly, which would amend Educ. Laws Sects. 305(30) and 3001-d to *require* the fingerprinting and national criminal history background checks of *all* nonpublic school employees in our State.

## Discussion

### 1. Federal law and policy favor school employee background checks

Federal law and policy favor school employee background checks. The National Child Protection Act, 42 U.S.C. Sects. 5119a, et seq. (enacted 1993, amended 1998), allows qualified schools and youth groups access to the FBI national criminal history database. Under this law, *state legislatures* may allow or require their nonpublic schools to perform criminal background checks.

According to the Report of the U.S. House of Representatives, Report No. 103-293, found at Congressional Record Vol. 139 (1993), at pp. 3128-3129:

"The purpose of the National Child Protection Act of 1993 is to.... encourage the States to adopt legislation requiring background checks for child care providers through the FBI criminal history record system..." (emphasis added)

The legislation grows out of the recommendations of noted child activist Oprah Winfrey, who has argued effectively that further Federal action is necessary to address one of the most preventable forms of child abuse - abuse outside the home by those already convicted of child abuse or other serious crimes...

*The national criminal history record system.* -- The FBI has maintained for many years criminal history records submitted by State, local and Federal agencies consisting of fingerprints, personal identification data, such as name, date of birth and physical description data, and reports of arrests and dispositions. The records are used for criminal justice purposes associated with investigations and bail and sentencing determinations, and for background screening under certain conditions.

Under current law, this criminal history record system can be accessed through the FBI for pre-employment and pre-licensing purposes if there is a State law requiring such a check. Many States already have such laws covering some types of positions that involve contacts with children...H.R. 1237 is intended to encourage States with such laws to expand their coverage, to encourage the remaining States to adopt similar laws requiring background checks through the national system, and to improve the quality of the criminal history records used for the checks." (emphasis added)

Even more recently, the Schools Safely Acquiring Faculty Excellence Act (contained within the Adam Walsh Child Protection and Safety Act), signed into law on July 27, 2006, provides that the U.S. Attorney General "shall, upon request of the chief executive officer of a State, conduct fingerprint-based checks of the national crime information databases.....pursuant to a request submitted by.....a private or public elementary school, a private or public secondary school, a local educational agency, or State educational agency in that State, on individuals employed by, under consideration for employment by, or otherwise in a position in which the individual would work with or around children in the school or agency." 42 U.S.C. Sect. 16962(b)(2). Under this law, *state Governors* are granted the power to authorize nonpublic school background checks.

The U.S. Education Department report, "Educator Sexual Misconduct: A Synthesis of Existing Literature" (June 2004), received national media attention, particularly for its finding that nearly 9.6% of American students, in their k-12 years, are victims of sexual misconduct (p.20). *The 147-page Congress-mandated report recommends fingerprint-based criminal background checks for all school personnel (pp.47-48).*

## 2. Mandatory fingerprinting is common in New York in many employment sectors

Legally mandated employee fingerprinting is well-established in New York. New York City public school employees have been fingerprinted since 1974, pursuant to Educ. Law Sect. 2590-h(20). Prospective State public school employees are subject to mandatory

fingerprinting since 2001, pursuant to Educ. Law Sect. 305(30). Child day care center workers must be fingerprinted, Soc. Serv. Law Sect. 390-b. Licensed school bus drivers must be fingerprinted, Vehicle & Traffic Law Sect. 509-d. Nursing home workers must be fingerprinted, Public Health Law Sects. 2899, 2899-a.

New York City child day care centers required to have a permit issued by the N.Y.C. Health Department must fingerprint and background check their current and prospective employees, Title 24, Rules of the City of New York, Sect. 47.15. Effective September 1, 2008, all religious child day care centers are required to fingerprint their current and prospective employees, pursuant to the newly enacted Sect. 43.13.

The common thread of the background check statutes and rules is that where vulnerable populations are involved, the workers need to be screened to ensure security. Fingerprinting and background checks have screened out many dangerous persons, and have therefore prevented many crimes that would have been inflicted on children and other vulnerable people.

The New York State Education Department (SED) has been fingerprinting all prospective public school employees outside New York City since 2001. Statistics available from SED reveal that nearly 1,400 job applicants have been rejected because of their criminal history backgrounds.

Logic and common-sense appear to dictate that in the eyes of New York law, in matters pertaining to health and safety, public and nonpublic school children should receive equal treatment. Both public and nonpublic school children should attend schools where the employees have been screened for criminal history backgrounds.

### 3. Many states require school employee fingerprinting

It is the clear trend for states to require background checks for both public and private schools. In 2003, the trade journal, *Education Week*, undertook an exhaustive survey of those states requiring background checks for public school employees. The survey found that 42 of the 50 states require public school employee background checks. See Hendrie, "States Target Sexual Abuse by Educators", *Education Week*, April 30, 2003.

We have not discovered a similar published survey for nonpublic schools, but our own research indicates that at least 12 states require nonpublic school employee fingerprinting and background checks. See, Alabama (Sect. 16-22A-6); California (Educ. Code Sects. 33190(g), 33191(a)); Florida (Sect. 1002.421(2)(i)); Illinois (ILCS 5/2-3.25o); Louisiana (R.S. 15:587.1); Maryland (Family Law Code Ann. Sect. 5-561); Massachusetts (71 M.G.L. 38R); Michigan (M.C.L.S. Sect. 380.1230); Minnesota (Stat. Sect. 123B.03); Ohio (R.C. 3319.391); Pennsylvania (24 P.S. Sect. 1-111); Rhode Island (Gen. Laws Sect. 16-2-18.1). These 12 states constitute about 40% of the U.S. population.

#### 4. Neither the State nor the nonpublic schools will pay the cost of fingerprinting

The cost of fingerprinting and background checks shall be borne by the nonpublic school employees, just as is currently done for public school employees. The State Government will incur administrative expenses only. The nonpublic schools will not incur any cost.

Accompanying the nonpublic school fingerprint bills in the 2007-2008 session were the Sponsors' Memoranda of Senator Dean Skelos and Assemblyman Weisenberg, which addressed the fiscal implications of mandatory nonpublic school fingerprinting. According to these Memoranda, the State would incur, "Administrative expenses" only.

We also call attention to the web site of the N.Y.S. Education Department (SED), Office of Teaching Initiatives, which administers the current optional fingerprint program for nonpublic schools. SED states that the \$94.25 cost of processing fingerprints and conducting the state and national background checks shall be paid by the prospective employee.

Further, the Legislature should not be concerned that the cost of nonpublic school fingerprinting may somehow become a State-reimbursable cost, under New York's Mandated Services Statute.

Nonpublic schools may be reimbursed by the State for the "actual costs" they incur in providing services which are "required by law to be rendered to the state in compliance with the requirements of the state's pupil evaluation program, the basic educational data system, regents examinations, the statewide evaluation plan, the uniform procedure for pupil attendance reporting, and other similar state prepared examinations and reporting procedures." See Laws of New York, 1974, Chapter 507, at Sect. 3 (popularly known as the "Mandated Services Statute"; see McKinney's Cons. Laws of N.Y. (2001), Educ. Law Sect. 3602-c, Historical and Statutory Notes, at pp. 225-227). Under the plain language of the Mandated Services Statute, a human resource expense such as employee fingerprinting is not a State-reimbursable cost.

#### 5. Persons with minor criminal histories may still be employed in nonpublic schools

The current Educ. Law 3035(3) provides a sturdy barrier for preventing illegal employment discrimination against persons with minor criminal histories who seek employment in public and nonpublic schools. Educ. Law 3035(3) obligates the State Commissioner of Education to grant or deny clearance for school employment pursuant to Executive Law Sect. 296(16) and Corrections Law Article 23A. These two statutes together provide that employers may not refuse to hire persons convicted of criminal offenses unless there is a "*direct relationship*" between the criminal offense and the employment; or, there is a risk to property or personal safety.

The State Education Department is already experienced in determining when public school job applicants with serious criminal records should be rejected. If mandatory

fingerprinting for nonpublic schools becomes the law, SED will have little difficulty in expanding its jurisdiction to nonpublic school job applicants, who will be afforded the same extensive due process rights as their public school counterparts. See, Title 8 N.Y.C.R.R. Part 87.

6. Name-based background checks are flawed; fingerprinting is highly reliable

Some might say that nonpublic schools are free to conduct name-based criminal background checks on their employees through private companies, and therefore, a mandatory law is unnecessary.

Name checks can also be conducted through the New York State Unified Court System, although such a check will not produce out-of-state and federal criminal convictions.

Notwithstanding the availability of name checks, a mandatory fingerprint law is still needed.

David Loesch, Assistant Director, Criminal Justice Information Division at the FBI, testified before the U.S. House of Representatives on May 18, 2000, at a hearing held on the Volunteer Safety Organization Act, a bill that would have established a national name-based criminal background check system, for civil purposes, to be operated by the FBI. The FBI firmly opposed the legislation, as Mr. Loesch testified that name checks are flawed, due to identity fraud and theft, while fingerprinting is the most reliable form of identification. Mr. Loesch testified in relevant part as follows, and this testimony essentially speaks for itself in describing the problem:

The great weight of the evidence supports the FBI and the CJIS APB's conclusion that a name check of criminal history record systems is a "rough" process which produces many "false negatives" (in which a criminal is not identified) and "false positives" (in which an individual without a criminal record is identified as having a record). It is only through the processing of fingerprints that one can actually verify whether a criminal history record is maintained on a particular individual. Several examples warrant specific mention.

To fulfill the FBI's obligations under the Government Performance and Results Act of 1993, 31 U.S.C. §1116, in 1998 the CJIS Division analyzed a statistically valid sample of the 6.9 million fingerprint cards submitted for employment and licensing purposes during FY 1997. When compared with the criminal prints on file at the FBI, some 8.7 percent, or approximately 600,000 of the fingerprints, resulted in "hits." Of greatest importance, we determined that some 11.7 percent of the hits, or 70,200 civil fingerprint cards, reflected entirely different names than those listed in the applicants' criminal history records and were only identified because of the fingerprint submissions. Hence, the criminal history records



of these persons - whom we deemed intentionally provided false names to evade detection of their records - would have been missed entirely during the background examination had the record check been name-based. Using these projections, of the 52,000 applicants for school system employment, some 5,900 or 11 percent who had criminal histories would use names entirely different from that listed on their criminal record. These intentionally misleading applicants had prior convictions ranging from assault to drug sales and were only detected because of positive, fingerprint-based identification.

Two independent investigations by the Small Business Administration of individuals participating in its loan program also support the conclusion that the criminal element perceives names checks as an opportunity to perpetrate fraud. The SBA studies were performed because of the high rate of SBA loan default and the SBA's suspicion that a significant percentage was attributable to active and intentional borrower fraud. In reviewing some 3,300 nonperforming loans, it was determined that 11.6 percent of these borrowers had concealed the existence of their criminal past and had fraudulently certified that they did not have criminal records. Spurred on by these figures, the SBA conducted a second investigation of 500 defaulting loans and found that some 8 percent of nonperforming loans were to borrowers with intentionally undisclosed criminal records. Fingerprint checks of these individuals would have thwarted most of these schemes....

In 1998, New York City Patrolman Anthony Mosomillo died because a fugitive parolee in police custody on an unrelated charge was released on bond by using fake identification to evade detection during a name-based check. Once released, he was able to assault and kill Officer Mosomillo. As a result of that incident, New York City abandoned the name check policy it had in effect since the mid-1970s and now uses only fingerprint-based identification prior to releasing arrestees on bond, explicitly recognizing that name-based identification is not only untrustworthy, but dangerous. (<http://judiciary.house.gov/Legacy/loes0518.htm>)  
(emphasis added)

In addition to the unreliability of name checks, we note, of course, that New York nonpublic schools are not legally required to name-check their employees – it is only an option, just as it is an option for the schools to fingerprint their prospective employees, under the current Educ. Law Sects. 305(30) and 3001-d. We thus believe a mandatory fingerprint law is absolutely essential for the good of protecting New York's nonpublic school children.

## 7. A mandatory fingerprint law is constitutional

We do not perceive any constitutional impediment to a state law mandating nonpublic school employee fingerprinting. Such a law can be firmly classified as a public health, safety, and child protection law. It will not have any effect on establishing nor advancing religion. There will be no entanglement between church and state. The First Amendment religion clauses will not be violated (the Congress "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."). The proposed law is neutral. It can be compared to mandatory child vaccination laws, and even fire and police protection, which certainly extend to both public and nonpublic school children. See, Zobrest v. Catalina Foothills School District, 509 U.S. 1, 113 S.Ct. 2462 (1993); Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679 (1952); Prince v. Mass., 321 U.S. 158, 166, 64 U.S. 438 (1944).

Perhaps because the constitutionality of the proposed legislation appears self-evident, we are unaware of any judicial opinion, nor even court challenge, addressing this issue.

## Conclusion

Statutory mandated fingerprinting for nonpublic school employees would be entirely consistent with long-standing common-law principles and modern public policy. As stated by the U.S. Supreme Court in, Veronica Sch. Dist. 47J v. Acton, 515 U.S. 646, 654, 115 S.Ct. 2386, 2391 (1995), "When parents place minor children in private schools for their education, the teachers and administrators of those schools stand in loco parentis over the children entrusted them." The private schools thus owe the same high duty of care parents ordinarily owe their own children.

Our New York Court of Appeals has written similarly, stating that a school owes a heightened or special duty of care to its students, by virtue of the transfer of physical custody of the children from the parents to the school. Pratt v. Robinson, 39 N.Y.2d 554, 384 N.Y.S.2d 749, 752-753 (1976); Hoose v. Drumm, 281 N.Y. 54, 57-58 (1939).

Judge Cardozo also reminds us in, Finlay v. Finlay, 240 N.Y. 429, 434 (1925), that the Government is "parens patriae" for the protection of infants. See, also, Prince v. Mass., supra, 321 U.S. at 166.

Very instructive is this passage in, Binghamton City Sch. Dist. v. Peacock, 33 A.D.3d 1074, 1076, 823 N.Y.S.2d 231, 233 (3rd Dept. 2006), app. dismissed, 8 N.Y.3d 840, 830 N.Y.S.2d 692 (2007), where the court wrote that New York possesses an "explicit and compelling public policy to protect children from the harmful conduct of adults (see e.g. Social Services Law § 384-b; Family Ct Act art 10), particularly in an educational setting (see e.g. Education Law art 23-B; Executive Law § 296 [4]). When an educator's conduct involves inappropriate contact with students who are minors, this policy gives the highest priority to protecting their welfare (see e.g. Matter of Shurgin v. Ambach, 56 NY2d 700, 703 [1982]....)."

We also call attention to Educ. Law **Art. 12**, "Health and Safety Grants for Nonpublic School Children". Sect. 549(1) therein provides as follows: "The legislature hereby finds and declares that: [...] The state has a primary responsibility to ensure the health, welfare and safety of children attending *both public and nonpublic schools*." (emphasis added)

A mandatory fingerprint law for nonpublic school employees will greatly enhance the security of 500,000 New York nonpublic schoolchildren - 15% of all children attending school in our State. There are more than 27,000 convicted sex offenders in New York State who should not work in close proximity to children. There are, additionally, many convicted murderers, violent offenders, and other dangerous persons with serious criminal histories who should also not work near children, where they might have the opportunity to inflict harm.

For all of the above reasons, we respectfully urge the passage of legislation which will legally mandate the fingerprinting and background checks of all prospective and current nonpublic school employees.

## **POINT II: ALL HEALTH, SAFETY AND CHILD PROTECTION LAWS APPLICABLE TO THE PUBLIC SCHOOLS SHOULD APPLY TO NEW YORK'S NONPUBLIC SCHOOLS**

Mandatory fingerprinting is not the only child protection law applicable to public schools, but not nonpublic schools. Here are some others:

\* All of Educ. Law Article 23-B, entitled, "Child Abuse in an Educational Setting", is applicable to *public schools districts only*. As a result, nonpublic school employees are not mandated to report child abuse occurring in an "educational setting", which is strictly defined as "the building and grounds of a public school district..." (Educ. Law Sect. 1125(5)). This mandated reporting law should be extended to nonpublic schools, which will facilitate criminal prosecutions when warranted, and also deter future abuse.

\* Educ. Law Article 23-B also prohibits "unreported resignation(s)" (see, Educ. Law Sect. 1133) of employees who are charged with child abuse, but again, this section only applies to public school employees. Thus, there is a high legal bar preventing abusive public school employees from moving school-to-school, but the same protection does not extend to the nonpublic schools. (See, Schemo, "Silently Shifting Teachers in Sex Abuse Cases", *New York Times*, June 18, 2002, where it is reported, "...Steven Nowicki, a teacher in Dobbs Ferry, N.Y., was sentenced to a minimum of 14 years in prison for molesting two brothers, 8 and 10 years old, in their home. Mr. Nowicki arrived in New York from a private school in Connecticut, which had fired him over sexual abuse accusations but gave him excellent recommendations, said Christopher Meagher, a lawyer representing the victims' families in civil suits against both the sending and receiving schools.").

\* Educ. Law Article 55 (sections 2801, 2801-a, 2802, 2814), entitled, "Regulation by Boards of Education of Conduct on School District Property", requires *public schools only* to establish and implement school safety plans.

\* Educ. Law 3209-a requires all *public school districts* to establish and implement written policies necessary to safeguard the life and health of children, and to prevent abuse.

\* Educ. Law Sect. 3001(2) provides that only certified teachers are authorized to teach in the public schools. Those certified teachers, if they misbehave in some manner, are legally subject to discipline. In the nonpublic schools, teachers need not be certified, and therefore, are not subject to any legally imposed discipline. Nonpublic school teachers are almost completely unmonitored by the State Department of Education.

Title 8, N.Y.C.R.R. Section 19.5, entitled, "Prohibition of corporal punishment and aversive interventions", provides at subdivision (a)(1) that, "No teacher, administrator, officer, employee or agent of a school district in this State,...an approved private school,...or a registered nonpublic nursery, kindergarten, elementary or secondary school in this State, shall use corporal punishment against a pupil". The extension of this rule to private and nonpublic school recently became effective, on January 16, 2007.

Where is the enforcement mechanism for this rule? Notwithstanding that corporal punishment is still occurring in New York's religious schools, the schools and parents have not been notified. There should be legally mandated **signage** in every religious school stating that *corporal punishment is illegal, and that every nonpublic school employee is a mandated reporter*.

There should be an enforcement mechanism within the State Education Department. *Parents and children should have an independent, government address to bring charges against a physically or sexually abusive teacher or other nonpublic school employee*.

\* Because public schools may only hire certified teachers, and must fingerprint all employees, they are precluded from employing persons with serious criminal histories. The State Education Department screens out such persons. *Nonpublic schools, on the other hand, may hire anyone, even convicted sex offenders and murderers*.

*Nonpublic school employees need to be certified and/or registered with the New York State Education Department.* (By contrast, if you have been convicted of a sex offense, you may still legally work in a New York nonpublic school, but you can't be licensed as a real estate broker; see, Real Property Law Sect. 440-a).

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Educ. Law Sect. 917 requires all public schools, BOCES, county vocational education and extension boards, and charter schools to maintain on-site in each school facility automated external defibrillator equipment. *This statute does not extend to nonpublic schools.*

These and all other disparities should end. All of the health, safety, and child protection laws protecting public school children should be fully extended to the nonpublic schools.

### **POINT III: THE STATUTE OF LIMITATIONS SHOULD BE RELAXED FOR ALLOWING CHILD SEX ABUSE VICTIMS EASIER ACCESS TO BOTH THE CRIMINAL JUSTICE AND CIVIL COURT SYSTEM**

The injustice of shutting the courthouse door on child sex abuse victims based on arbitrary statute of limitation deadlines has only recently entered public discussion here in New York. See, Hamilton, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge Univ. Press 2008). Prof. Hamilton, of Yeshiva University's Cardozo Law School, writes: "The central proposition of this book is that the SOL (statute of limitations) for childhood sexual abuse should be treated like an SOL for murder, not property. Many survivors experience such abuse as the murder of their childhood or their soul. They have an inherently difficult time coming forward, and it is in society's interest to have sex abuse survivors identify child predators for the public in judicial proceedings." (p.3)

The New York statutes of limitations for both criminal and civil cases are too short, usually expiring when victims are in their early to mid-20s. Many victims are unable to psychologically deal with the trauma of child sex abuse until well into their 30s and 40s. As a result, many criminal and civil cases against child sex molesters, and the institutions that employ them, are not brought. Meanwhile, the molesters go unpunished, and are free to attack and corrupt more children. The victims suffer in silence, are denied justice, and are uncompensated for their grievous injuries.

Some older victims have attempted civil cases against molesters and the employing institutions, but the New York courts have been very strict in applying the applicable statutes of limitations, and denying access to the civil justice system. See, *Zumpano v. Quinn*, 6 N.Y.2d 666, 816 N.Y.S.2d 703 (2006); *Doe v. Kolko and Yeshiva Torah Temimah*, 2008 U.S. Dist. LEXIS 71174 (E.D.N.Y. 2008).

Over the past few years, there have been multiple bills introduced in the Assembly and Senate that would extend and relax the criminal and civil statutes of limitation for child sex abuse cases. One such bill was A.4560-B, introduced last year by Assembly Member Margaret M. Markey. Among its provisions is a one-year "window" for child sex abuse victims to bring civil cases that may have been barred under current statute of limitation law.

Civil lawsuits, in particular, serve at least two important functions. Victims are compensated, and feel a sense of closure and justice. Additionally, tort litigation spurs remedial action by institutional defendants. See, Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Clergy Sexual Abuse* (Harvard Univ. Press 2008); Neustein (ed.), *"Tempest in the Temple: Jewish Communities and Child Sex Scandals"* (Brandeis Univ. Press 2009).

We favor legislation that would lower the statute of limitations bar, which has been successfully introduced in other states, including California and Delaware.

## **CONCLUSION**

New York State has a large nonpublic school population – 15% of the total, or about 500,000 children; nationwide, it is 9%. Nevertheless, our religious and private schools appear to be operating under 19<sup>th</sup> century laws in a 21<sup>st</sup> century society. Some religious and private schools have been plagued with child abuse, and other social ills. In the near total absence of state law and regulation, it is no wonder that this situation continues to fester.

The State Legislature is respectfully urged to hold public hearings, through its appropriate Committees, and the critical legislation outlined above should be introduced and enacted.

## THE JEWISH LAW OBLIGATION TO MANDATE FINGERPRINTING OF SCHOOL EMPLOYEES

Rabbi Mark Dratch

Jewish law forbids its adherents to cause harm to the persons and property of others, as well as to their own persons and property.<sup>1</sup> Moreover, it obligates us to protect the welfare of persons and property by banning the engagement in dangerous activities. It also enjoins us to be proactive in preventing hazards from being created and in removing hazards that are present.<sup>2</sup>

There are numerous Biblical and rabbinic sources that require us to foresee potential dangers and to take preventive action in order to avert harm. The Bible commands the construction of a fence around the roofs of houses to which people have access, in order to prevent falls (see Deut. 22:8). The Talmud, *Ketubot* 41a, expands this charge by obliging us to prevent or remove all dangerous situations: "[What is the biblical source] which bans a person from breeding a bad dog in his house or from keeping a rickety ladder in his house? [Scripture] states, 'That thou bring not blood upon your house (Deut. 22:8).'"

The dog and ladder are prototypes of potential hazards. Thus, one is liable not only for being a direct cause of damage, but for allowing and maintaining a potential hazardous situation as well.

This principle is codified in The Code of Jewish Law, *Hoshen Mishpat* 427:8:

There is a positive commandment to remove any obstruction that can cause danger, to safeguard against it, and to be vigilant regarding it, as it is written, "Only be on your guard, and protect your soul" (Deut. 4:9). If one does not remove [these obstacles] and leaves those [objects or situations] that can cause harm [in place], he nullifies this positive commandment and also violates the prohibition, "you should not bring any blood upon your house" (Deut. 22:8).

In matters of both present and potential danger, Jewish tradition asserts a very realistic, practical approach, forbidding any reliance on Divine protection. Rabbi Moses Isserles, the great 16<sup>th</sup> century Halakhic (legal) authority known as the Rema, ruled:

A person should be careful regarding all matters that can cause danger, because danger is a more severe concern than the ritually forbidden. One should be more vigilant regarding [protecting oneself from] a doubtful

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<sup>1</sup> *Hoshen Mishpat* 378:1.

<sup>2</sup> *Hoshen Mishpat* 427:8; 382:1.

danger than he is regarding a possible violation of ritual law... and it is forbidden to rely on a miracle...<sup>3</sup>

Although there is a tradition that one engaged in a religious mission will not suffer harm, the Talmud asserts that where danger is likely to occur one may not rely upon this promise.<sup>4</sup>

The application is obvious. Sex offenders are dangerous. Recidivism is high. Their presence in schools is dangerous. Children need protection.

Life, by its nature, is hazardous and not all potential harm can be avoided. Citing the verse, "the Lord watches out for the simple" (Psalms 116:6), the Talmud permits engaging in those low-level risky activities which are widespread and socially accepted.<sup>5</sup> Nevertheless, this license is not absolute. In an unusual responsum, Rabbi Moshe Feinstein, one of the leading rabbinic decisors of 20<sup>th</sup> century America, discussed whether it was permitted for an observant Jew to be a professional ball player, concerned with the element of danger inherent in the sport. Rabbi Feinstein rules permissively because the incidence of harm to himself or others is statistically negligible. Nevertheless, he qualifies his statement with the following caveat: "[One is permitted to engage in an activity that might remotely cause harm to another] only when that other person engages in the activity willingly, for one certainly does not have permission to expose others even to remote danger if they were otherwise unaware of the situation or did not consent to expose themselves to danger, regardless of how remote it is."<sup>6</sup>

Objections have been raised in certain Jewish circles that partnering with the government in the matter of mandated fingerprinting is contrary to Jewish law. They cite the Halakhic restriction on reporting fellow Jews to non-Jewish authorities, a significant matter referred to as *mesirah*. Suffice it to say that according to the overwhelming majority of the most prominent decisors of our generation, this is not an issue, especially in matters of child abuse. Some of these authorities argue that in the case of a meitzar ha-tzibbur (public menace), informing is mandatory; since the rate of recidivism in child abuse cases is high, a child molester is considered a "public menace."<sup>7</sup> Others aver that a child abuser is worse than a meitzar and is in the category of rodef (pursuer); in such a situation one is required to do everything to stop the attack.<sup>8</sup> In addition, when a person

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<sup>3</sup> *Yoreh De'ah* 115:5.

<sup>4</sup> *Kiddushin* 39a.

<sup>5</sup> *Shabbat* 129b; *Yevamot* 12b, 72b, 100b; *Ketubot* 39a; *Sanhedrin* 110b.

<sup>6</sup> *She'eilot u-Teshuvot Iggerot Moshe*, Hoshen *Mishpat*, I, no. 104.

<sup>7</sup> See Rabbi Eliezer Waldenberg, quoted in *Nishmat Avraham*, IV, p. 209; R. Asher Zelig Weiss, "Mesirah la-shiltonot be-hashud be-hit'olelut be-yeladim" in *Yeshurun*, 5765, p. 659; R. Yehudah Silman, "Teshuvah le-shei'lah be-inyan divu-ah al pegiyot be-yeladim" in *Yeshurun*, 5765, p. 661.

<sup>8</sup> R. Moshe Halberstam, *Mesirah* le-shiltonot be-mi she-mit'olel be-yeladav in *Yeshurun* 5765, p. 646.



is a repeat abuser ("ragil le-hakot —strikes on a continuing basis"), one is permitted to report him to the non-Jewish authorities in order to prevent him from abusing again.<sup>9</sup>

In a ruling of great significance for victims of abuse, Rema writes, "A person who attacks others should be punished. If the Jewish authorities do not have the power to punish him, he must be punished by the civil authorities."<sup>10</sup> According to this ruling, the victim has the right to go to the civil authorities not just to prevent an attack, but to seek punishment and justice for an attack that has already taken place.<sup>11</sup>

A leading contemporary Halakhic decisor, Rabbi Shalom Yosef Elyashiv, ruled that one may report a child abuser to government authorities in America if he is certain about the abuse.<sup>12</sup> Others maintain the prohibitions of *mesirah* and *arka 'ot* (utilizing the secular court system) do not apply to these situations altogether. Rabbi Yitzchak Weiss avers that the state has an interest in the safety and welfare of its citizens and one may therefore report those who are endangering that safety.<sup>13</sup>

Regarding the specific question of requiring fingerprinting of all employees and volunteers in parochial schools, it is obvious in light of our discussion that Jewish law not only allows for it, but as an act of prevention of harm to innocent school children, requires it. Fingerprints themselves have been recognized as a valid form of identification in Jewish law and there is sufficient precedent to rely on government experts and protocol in these matters.<sup>14</sup> Even those few rabbinic authorities objecting to the use of fingerprints in order to find a person guilty of a crime may agree to their use in this case. Here, the fingerprints are not used to convict anyone of a crime. They are used to screen and identify those who have already been convicted and are listed as sex offenders.

Furthermore, the community has every right and obligation to proceed in such a cautious manner. Despite the religious call to judge people favorably, there is room for suspicion, precaution, and protection of self and others: "A person should always consider others as thieves, while honoring them like Rabban Gamliel."<sup>15</sup> We may not let our favorable

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<sup>9</sup> Shakh, Hoshen Mishpat 388, no. 45 and 60.

<sup>10</sup> Hoshen Mishpat 388:7 and Shakh, no. 45; See also gloss of Rema to Hoshen Mishpat 388:9; Ba'i Hayei and *Maharam miRiszburg* cited in *Pahad Yitzhak*, Ma'arekhet Hovel be-Haveiro.

<sup>11</sup> See Darkei Moshe, Hoshen Mishpat 388 and Teshuvot *Maharam MiRizbork* cited by Shakh.

<sup>12</sup> "She-eilah be-inyan hoda'ah *la-memshalah al hit'olelut be-yeled 'o be-yaldah*" in Yeshurun, p. 641.

<sup>13</sup> She'eilot u-Teshuvot Minhat Yitzhak VIII:148.

<sup>14</sup> She'eilot u-Teshuvot Ein Yitzhak, Even ha-Ezer no. 31; She'eilot u-Teshuvot Yabi'a Omer, VI, Even ha-Ezer, no. 3; Otzar ha-Poskim, 117:199; R. Zalman Nehemiah Goldberg, Tehumin, 23, p. 116; S. Fisher, *Noam*, II, p. 211; G. Navon, Dinei Yisrael, VII, p. 129.

<sup>15</sup> Masekhet Derekh Eretz, Pirkei Ben Azzai 3:3.

judgment cause us to ignore possible violations of Jewish law or potential harm to others. The Torah obligates us to rebuke those who have sinned<sup>16</sup> as well as to protect the safety and welfare of the community.<sup>17</sup> Automatically assuming another's innocence prevents these obligations from being fulfilled.<sup>18</sup> And this obligation of rebuke applies even when the one accused of doing wrong is one's parent or teacher.<sup>19</sup>

Finally, another leading 20<sup>th</sup> century sage, Rabbi Shlomo Zalman Auerbach, allowed for the investigation of an entire group of people in order to uncover a theft by one of them. He felt that the inconvenience and shame of being suspect imposed on innocents was not significant when it came to the larger good of the pursuit of justice.<sup>20</sup>

Fingerprinting all employees and volunteers in Jewish schools is a small price to pay for the potential benefits of saving countless children from lifetimes of pain and suffering. While it is an obligation under Jewish law, it should not remain a discretionary act by schools. Only through state mandate can we ensure that all schools will comply and that all of our children will be safer. We owe them no less.

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<sup>16</sup> Lev. 19:17; *Arakhin* 16b; *Hil. De'ot* 6:7-9.

<sup>17</sup> "Do not stand by the blood of your neighbor" (Lev. 19:16).

<sup>18</sup> *Hafetz Hayyim*, *kelal* 4, *Be'er Mayim Hayyim* no. 18; *She'eilot u-Teshuvot Minhag Yitzhak* VI, no. 139:11.

<sup>19</sup> *Baba Mezi'a* 31b. In fact, R. Yehudah was greatly rewarded for calling his teacher, Shmuel, to task, see *Tosafot*, *Baba Batra* 10b, s.v. *elyonim le-mata ve-tahtonim le-ma'alah*.

<sup>20</sup> *She'eilot u-Teshuvot Minhag Shlomo*, *Tinyana*, no. 133.

## **The Impact of Child Sexual Abuse**

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One way to evaluate the morality of a society or community is to examine how it treats and protects its most vulnerable members. Our children lack the physical power, intellectual resources, political sophistication, and legal standing to advocate for or protect themselves. As such, they are certainly among the most vulnerable in our society. They depend on their parents, teachers, physicians, therapists, clergy, communal leaders, police, and government officials to look after their safety and protection. When these individuals fail to protect them-and all the more so when these individuals victimize them-children have little or no ability to turn elsewhere.

I am therefore honored to have been invited by the Jewish Board of Advocates for Children to prepare a synopsis of the impact of sexual-abuse on children. It is my hope that this will further their worthy goal of influencing our communities to develop policies and adopt measures that will help prevent child sexual abuse.

### **Definition and Scope of Child Sexual Abuse**

Sexual abuse of children has occurred in all societies since the dawn of civilization, as testified to in ancient literatures from around the world. It should be defined as any sexual contact with a child which is coercive, or which involves an adult or significantly older child taking advantage of the child's naïveté or inability to protest. These sexual activities could include any of the following: exhibitionism; voyeurism; touching genitals, buttocks, or other body parts of the child for sexual arousal; directing the child to touch the perpetrator; fellatio or cunnilingus; anal or vaginal penetration; or any other nonconsensual activity intended by the perpetrator for sexual gratification.

The incidence and frequency of sexual abuse are not precisely known. It is believed by most experts that sexual abuse of children is vastly underreported. One basis for this belief is the fact that in random surveys of adults, the reported frequency of sexual abuse during childhood is far higher by many orders of magnitude than the frequency of allegations which are reported to authorities and substantiated by child protective service agencies. The National Committee to Prevent Child Abuse collects data every year on the incidence of reports of various forms of child abuse. In 1997, the incidence of substantiated sexual abuse allegations was less than two per thousand children (<0.2%). By contrast, the frequency of sexual abuse reported by adults who are answering questions about their experiences during childhood varies from 10% to 35%. The wide range of frequencies found in these studies can in part be explained by the criteria used to define sexual abuse. For example, in some studies only penetration or touching of genitalia was classified as sexual abuse, where others use a more inclusive definition. The numbers are consistently two to three times higher for sexual abuse of girls than that of boys. The US Surgeon General's Report in 1999 estimated that 15%-33% of American children have been sexually abused. (A comprehensive and scientific meta-analysis is a very complicated undertaking, and is beyond the scope of this paper).

### **Physical trauma caused by sexual abuse**

There may be immediate physical consequences of sexual abuse, which cause suffering for the survivor and require medical attention. When sexual abuse involves vaginal or anal penetration, there can be physical trauma for girls or boy which causes significant physical discomfort and pain, and which puts children at risk for bleeding or infection. Problems or pain with urination or defecation are common consequences of this physical trauma. Children who have been sexually assaulted are also at increased risk for sexually transmitted diseases, including HIV infection. Medical evaluation is therefore indicated in such cases as the child may require medical or surgical treatments, and prompt medical treatment may prevent the child from contracting a sexually transmitted disease. Sedation or anesthesia for young children is sometimes advisable during these examinations. Such evaluations are also an occasion for the collection of evidence for eventual criminal prosecution of the perpetrator. In recent years, many emergency departments have developed specialized evaluation teams so that the evaluation and treatment of abused children can be integrated with assessments by forensic mental health professionals. The advent of such resources enables children to receive appropriate evaluation and care without being traumatized further, and enables law enforcement officials to obtain

physical evidence and testimony which will be admissible in court. This was not always the case, as survivors of sexual abuse prior to the 1990's can attest.

### **Short Term Psychological Consequences**

Children who have been sexually abused often show immediate symptoms of the psychological impact of this trauma. Recognition by parents, teachers or other responsible adults of an abrupt change in a child's behavior can lead to a discovery of molestation or sexual assault. Some children immediately show signs of psychiatric disorders: depressed mood, anxiety, obsessions, panic attacks, fear of certain locations or people, social withdrawal, severe nightmares, daydreaming, blacking out, fainting, and insomnia, are some examples. Changes in a child's sexual behavior are also seen in some cases following sexual abuse. For example, some children may show new curiosity about sexual topics, a sudden awareness of sexual activities, a new preoccupation with genitals and nudity, or inappropriate sexual touch or play with other children, adults or dolls. These short term psychological symptoms are believed to be only the superficial manifestations of an internal state of torment and confusion.

It is important to note that when children develop symptoms and signs of psychological distress, one should not automatically assume that it is the result of sexual abuse. Children showing a change in behavior require comprehensive assessment by a competent child psychiatrist or psychologist who will screen for sexual abuse, along with many other potential causes, in the course of the evaluation.

One complication in determining the psychological impact of sexual abuse is the fact that sexual predators are often quite adept at identifying children with low self esteem, who crave positive attention from adults, who are lonely for companionship, who are less likely to protest, who are more susceptible to manipulation or intimidation, or who are being raised in a home lacking parental attention or vigilance. Such children may be both more vulnerable to predators as well as more prone to developing psychological disturbances.

### **Long-term psychological impact of sexual abuse**

Summarizing this vast topic is a formidable task. Every discipline within psychiatry and psychology (cognitive neuroscience, developmental psychopathology, attachment theory, cognitive behavioral psychology, psychoanalytic theory, family systems theories, marital therapy, sexual disorders, mood disorders, psychotic disorders, anxiety disorders, etc.) is concerned with the long term impact of sexual abuse on its victims. We must also briefly consider the strain on the legal system, the educational system, and social service agencies.

Children are entirely dependent on adults for their basic physical and emotional needs. From the first moments of life, the human being is engaged in relationships with other people. According to all views of human development, the young child's primary caretakers play a powerful role in shaping how that individual will perceive and feel and about himself or herself as a person, and about his or her place in the larger world. The ideal parents are not perfect parents, and the ideal home is not a perfect home. However, despite the inevitable shortcomings of all parents, most children are born into a loving, safe, and stable home. In a good situation, the child is privileged

to be raised by benevolent caretakers (typically, but not necessarily, parents), who take his or her needs seriously, who answer his or her questions thoughtfully, and who enjoy the child's presence and company, and who delight in the child's successes and accomplishments. A parental relationship like this has a lasting effect on helping a child view himself or herself as a loveable, competent individual. It also and contributes toward the internalization of hope and ambition for a happy, meaningful life. Trauma impacts the way children perceive others, themselves, their bodies, their safety, and their place in the world. If trauma (emotional, physical, or sexual) causes a breakdown in this normal developmental process, it will have long term effects on the individual that will extend into adulthood.

The long-term consequences of childhood sexual abuse depend on many factors, including the following: (1) the nature, duration, and severity of the abuse; (2) the age of the child enduring the abuse; (3) the child's relationship with the abuser, (4) the response of caretakers and other adults who are charged with looking after the child's protection, (5) the nature of the child's attachment to and relationships with parents, siblings, grandparents, family, friends and other important and supportive people in the child's life during and after the trauma; (6) the provision of appropriate mental health treatment during childhood and adolescence; and (7) any genetic, constitutional, or other environmental factors which might predispose to developing psychological problems or protect him or her from that outcome.

We anticipate relatively fewer and less severe long-term effects when trauma is less severe, less frequent, occurs at a relatively older age, is not perpetrated by the child's primary caregivers, and the response by responsible adults (parents, teachers, police, child protective services, physicians, psychotherapists, and clergy) sensitively reestablishes a sense of safety. When the trauma is severe and frequent, perpetrated by the individuals upon whom the child is counting on for protection and love, ignored or not believed by responsible adults, or reacted to with frantic anxiety that causes more fright rather than reassurance, and when appropriate mental health treatment is denied, the child will be at greater risk for severe long-term effects of the trauma.

According to the Third National Incidence Study of Child Abuse and Neglect, a biological parent is the perpetrator in 29% of cases of sexual abuse. The most destructive cases of abuse involve three things: (1) direct abuse (physical, emotional, sexual) and harm by the child's primary caregivers, (2) Profound neglect and absence of affection by the children's primary caregivers, and (3) a form of "brainwashing", accomplished by repeatedly communicating to the abused child that abuse and neglect are perfectly normal, and that his or her expectation to be treated kindly is because he or she is "crazy". The combination of these three factors has been aptly described in the trauma literature as "soul murder".

Not all abuse is this severe. Furthermore, many children despite horribly abusive homes are able to form relationships with other individuals (grandparents, teachers, a rabbi or minister, friends' parents, etc.) who provide stability, love, reason, and hope. Judging from the psychotherapy treatments of adults who have suffered severe trauma and neglect by parents during childhood, there is a consensus among professionals that the presence of other supportive and caring individuals has an important beneficial impact as far as long-term consequences of abuse. It should also be noted that in cases where the perpetrator is not a relative, the child's parents may have a greater capacity than a psychotherapist to help lessen the long-term consequences of

sexual abuse. Psychotherapy is not recommended for every single child who has been victimized. Sometimes, professional consultation and guidance for parents rather than direct psychotherapy with the child is recommended.

### **Long-Term Effects: Suicide**

Suicide is a complex phenomenon, and cannot be reduced to any single "cause". However, in numerous studies, childhood sexual abuse has been consistently observed by numerous researchers to be an independent and significant risk factor for suicide attempts and completed suicide. This violent, premature end to life is arguably the most tragic consequence of sexual abuse. In addition, suicide wreaks emotional havoc on the parents, siblings, children, and other loved ones of the deceased.

### **Long-Term Effects: Psychiatric Disorders**

The research literature on virtually every psychiatric disorder reveals that childhood abuse in general, and sexual abuse in particular, is a significant risk factor for the development of mental illness during later childhood, adolescence and adulthood. This remarkable finding is true even for disorders such as Schizophrenia, which were long thought to be mostly determined by genetic risk factors. The list of disorders includes the following: Major Depressive Disorder, Bipolar Affective Disorder, Schizophrenia, Anxiety Disorders, Somatoform Disorders, Eating Disorders (such as Bulimia Nervosa and Anorexia Nervosa), Dissociative Disorders, Alcohol and Drug Dependence, and Personality Disorders. Mental illness is extremely complex, and the best current research demonstrates that there are multiple biological, psychological, and environmental factors at work which determine whether a given individual develops a mental disorder. Child abuse, including sexual trauma, is one significant factor in this complex mix.

Three particular disorders deserve special attention in terms of long term effects because of their very close correlation with sexual abuse during childhood: (1) Post Traumatic Stress Disorder (PTSD); (2) Borderline Personality Disorder; and (3) Dissociative Identity Disorder.

**Post Traumatic Stress Disorder (PTSD):** PTSD is by definition linked to traumatic events. Individuals with this condition suffer significantly. They experience flashbacks (the sense they are repeatedly "re-living" the traumatic event), insomnia, severe anxiety, a state of constant worry about being attacked or assaulted, nightmares related to the trauma, and usually significant fatigue and depression. This disorder was first identified with soldiers who had suffered horrible trauma during battle, and was referred to as "combat fatigue" or "shell shock." This disorder is now recognized as a possible consequence of any trauma. Survivors of childhood sexual abuse frequently show severe posttraumatic symptoms. This disorder is treated with psychotherapy, and psychotropic medications have also been shown to be helpful.

**Borderline Personality Disorder:** Borderline Personality Disorder (or, in its more inclusive classification, "Borderline Personality Organization") is a complex developmental syndrome which first manifests in adolescence and lasts into adulthood. It is considered one of the most difficult mental disorders to treat, and one of the most difficult syndromes to endure as a patient. It involves the following: (1) chronic feelings of emptiness and aloneness, (2) a persistent fear of

abandonment and frantic behaviors to avoid real or perceived abandonment (such as suicidal threats in the immediate aftermath of a breakup), (3) unstable identity and self-image, and fragile self-esteem (4) inability to tolerate anxiety and cope with stressful events; (5) extremely volatile and unstable interpersonal relationships, (6) problems with impulse control (including eating disorders, substance use disorders); (7) outbursts of rage and intense anger that cannot be controlled; (8) brief episodes of psychosis (such as paranoid beliefs or hallucinations); (9) recurrent self-injurious behaviors, such as suicide attempts or deliberate self-mutilation (e.g., cutting oneself). Many patients with Borderline Personality Disorder have been sexually abused during childhood. Special forms of intensive psychotherapy are effective for treatment of this condition, but must be provided by experts. Medications are of some benefit as well.

**Dissociative Identity Disorder:** This disorder is also known as "multiple personality disorder." The sensational dramatization of this disorder in the popular media has resulted in some skepticism and controversy about the validity of this diagnosis. However, it remains the consensus of the vast majority of psychiatrists (including the opinion of this author based on first-hand clinical experience with numerous patients), psychologists, and research experts that this disorder does in fact exist. Most experts believe that very severe child sexual and/or physical abuse is always a major factor in development of this very serious psychiatric disorder, which is treated with specialized forms of psychotherapy provided by experts with special training with this group of patients.

### **Long-Term Effects: Changes in Brain Function, Impact on General Medical Health**

Studies in the last 10 years indicate that there are probably changes in brain structure and function as a result of sexual abuse during childhood. Particular focus has been on the limbic system, which is a set of structures deep within the brain which are implicated in mood regulation, memory, and emotion. Attention is devoted to another area of the brain, the medial pre-frontal cortex. These structures are thought to play a role in many psychiatric disorders.

Other evidence suggests that individuals who have suffered sexual abuse are also at increased risk for general health problems. These include autoimmune diseases (e.g., lupus, MS, and arthritis), asthma, heart disease, paroxysmal vocal cord dysfunction, peptic ulcers, irritable bowel syndrome, and diabetes. This is also true of medical conditions where there are already well-known correlations with mood disorders or other psychiatric problems, such as chronic fatigue syndrome, fibromyalgia, and migraines.

### **Long-Term Effects: Cognitive Style, Self Image, Relationships, and Sexuality**

The consequences of sexual abuse discussed in this section, unlike psychiatric and medical disorders discussed above, are subtle and covert. Psychotherapists and psychoanalysts have become aware of these consequences through their extensive work with patients who have been sexually abused, and their observation that such patients frequently show common patterns in how they perceive themselves, relate to others, and cope with stress and anxiety.



Children who suffer sexual abuse are often threatened with violent consequences if they tell anyone, and are forced to cope alone with the emotional impact of this frightening trauma. As a result, they often develop unusual ways of handling distress: numbing, suppressing, ignoring, repressing (i.e. "forgetting" in order to avoid awareness), and denying the reality of what they have suffered. These coping strategies, which were helpful during childhood, can later in life become characteristic ways that the abuse survivor may respond to problems. As a result, some individuals who have been abused may tend to procrastinate, "forget about", or otherwise avoid important tasks or conflicts because of how distressing they are. While this may sound like a rather trivial or academic observation, in reality these coping strategies can cause major, inestimable problems for those who have survived childhood sexual abuse: the inability to do homework on time, study for tests, pay bills, attend to financial problems, identify and handle relationship conflicts, advocate for one's own children, file paperwork or complete applications in a timely manner, attend meetings, apply for jobs, show up for work when one fears criticism from a supervisor, etc., etc. The inability to deal directly with anxiety provoking tasks, for whatever reason, has devastating consequences in all areas of adult life.

Shame is another very common difficulty for individuals who have been sexually abused. Intense shame is destructive for one's self-image. It encourages people to deny and hide from problems rather than acknowledge and address them. Shame interferes with the ability to be assertive in the face of adversity, or to advocate for oneself. As a result, survivors of sexual abuse may be unlikely to negotiate effectively for a better salary, reluctant to apply for a promotion, and reluctant to seek help for problems. They may be less likely to pursue friendships and romantic relationships, anticipating rejection or humiliation. They may be less open to constructive criticism, perceiving realistic feedback as a devastating condemnation.

Individuals who have survived sexual abuse (or physical abuse) often find it very difficult to express anger or tolerate anger in others. They may be unlikely to recognize when they are being victimized or taken advantage of. They may end up in one-sided friendships or love relationships, where they do much giving and little receiving. They may find it to be very difficult to say "no" if they fear this will provoke anger in the boss, peer, friend, or lover who is making an unreasonable demand. Paradoxically, some individuals who have suffered childhood sexual abuse show a tendency to unwittingly seek out abusive lovers or friends. There are many psychological theories as to why this occurs, but what is clear is that this always has devastating consequences for these survivors, who end up suffering physical abuse, financial exploitation, rape, and emotional torment as adults.

Survivors of sexual abuse often show various types of difficulty with sexuality. Some individuals with a history of sexual abuse become extremely promiscuous during adolescence and adulthood. Working through issues and conflicts related to sexual trauma in psychotherapy treatment is often accompanied by a resolution of these risky and self-destructive sexual behaviors. Other survivors of sexual abuse, by contrast, may become extremely phobic or inhibited sexually. They may completely avoid sex and sexual relationships. Or they may find sex painful, repulsive, or not pleasurable. Such individuals are deprived the important contribution of sex to their loving, intimate adult relationships and fail to benefit from the great impact on self-esteem of a gratifying sex life. Some research suggests that individuals who develop a gay, lesbian, or bisexual orientation show higher rates of sexual abuse during

childhood. (These findings are controversial in the context of a shift in the last 30 years toward a view of homosexuality as an alternate orientation, and not a sexual disorder.)

### **Long-Term Consequences: Criminality and Future Perpetrators of Sexual Abuse**

There is evidence to suggest that victims of sexual abuse are more likely to become involved in criminal activity, and more likely to be incarcerated for criminal offenses later in adolescence and adulthood.

There are no excuses for perpetrating sexual abuse of children. However, it is an undeniable fact that perpetrators of child sexual abuse show very high rates of having been sexually victimized during childhood. The relatives and neighbors of survivors of sexual trauma are therefore at higher risk for being abused. The perpetuation of an inter-generational cycle of sexual abuse through the creation of another generation of perpetrators is another tragic, long-term consequence of sexual trauma.

### **Long-Term Consequences: Strain on the Legal System and Social Service Institutions**

It is staggering to consider the number of professionals and administrative support staff who are involved in every allegation of sexual abuse. It is impossible to calculate the economic impact of this, but a narrative summary of one typical case will demonstrate the point. A child reports sexual abuse by a coach. The child is taken for an emergency evaluation. The child is seen by one or more nurses, and by one or more physicians. Numerous samples are taken for laboratory studies. The child may also receive screening evaluations for other forms of abuse, and may undergo a series of x-rays for every area of the body. The child will be interviewed by a psychiatrist or psychologist. The child and family will likely be referred to a child psychiatrist or psychologist for an outpatient evaluation. Treatment may be recommended for the child and/or the family.

Reports will be filed to the local agency responsible for child protective services. A supervisor and at least one case worker from that agency will be assigned. The case worker(s) will interview the child and probably the family on at least a few occasions. The school will be notified, and the coach will be placed on summary suspension, pending an investigation. This often means that his pay will continue while he is not working until the investigation is completed, and the school district will absorb the cost of a substitute coach. The coach will retain his own private attorney. The school district will also retain attorneys, as the school may be at major risk for liability. Parents of other children who have had contact with this coach will be notified that a child has made allegations of sexual abuse. Each family will deal with this information in its own way, but many families will have their children evaluated by a psychologist or psychiatrist recommended by the school, or at a local medical center with specialized services for sexual abuse. Additional allegations may or may not surface. It will be difficult to protect the confidentiality of the child, as numerous school officials and staff will know who has made the allegation.

The police will conduct investigations of the coach and each allegation. This will involve at least one but probably more detectives. The school will also conduct its own internal investigation of the coach, whether there was due diligence at the time of his hiring, whether this was the first allegation, whether there were any signs which could have alerted school officials sooner, etc. Often, expert consultants will be brought in to review the school's hiring policies, screening of employees, etc. Lawyers for the school, for the coach, and for the families will wish to be apprised of every phase of these investigations. The evidence will be presented to the district attorney's office.

Depending on the evidence and the stance taken by the coach and his attorneys, the case may be dropped, settled with a plea arrangement, or prosecuted in criminal court. Incarceration carries additional expenses, and the incarceration of sex offenders is extremely complicated for the prison system. "Rehabilitation" treatments, which are usually court-ordered, are also expensive. (The consensus in the literature appears to be that there is some scientific evidence of success of these treatments, but that recidivism will continue to be a major risk.) Civil action against the school, the school district, the coach, and other school officials are also a possibility. All of the professionals involved in the various dimensions of this case which have just been mentioned have numerous support staff working with them. In short, the amount of human effort and the funding to support it for each allegation is staggering.

Another dimension to be considered is that law enforcement agents and social service agencies are often in an impossible situation. They must take the allegations seriously, yet they must follow rules of evidence and procedure which protect the rights of the accused. This means that prosecution is extremely difficult, particularly when predators conduct themselves in a sophisticated manner to avoid creating any hard evidence that could be used against them. Social service agencies must deal with reluctant families who fear that their suitability as parents is now under the microscope, and reluctant children who have been intimidated and threatened in order to prevent them from testifying. In addition, the number of false complaints which are filed with child protective services for various reasons is not insignificant. Generally speaking, case workers are adept at spotting false accusations, but in every instance where a false accusation is taken seriously it greatly damages the reputation of our social service institutions and their integrity. It is therefore not at all surprising that there is an extremely high burnout rate for social workers in this challenging but vitally important field.

### **Summary**

Sexual abuse constitutes a massive assault on the body and mind of the child. The effects of childhood sexual abuse include immediate psychological effects; physical trauma and related symptoms; increased risk for psychiatric illnesses during adolescence and adulthood; increased risk of suicide attempts and suicide; adverse impact on self-image and self esteem; the development of dysfunctional psychological coping mechanisms; interpersonal relationship problems; adverse effects on academic performance, on employment, and occupational functioning; a wide spectrum of sexual problems; increased risk of medical illnesses; a staggering burden on the institutions called upon to administer the legal and social services in the aftermath of sexual victimization; and the creation of future sexual abuse perpetrators. The benefits of prevention of every single case of child abuse must be thought about in such terms.

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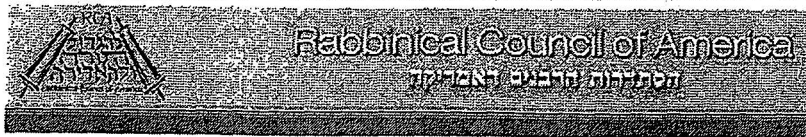
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### Criminal Background Checks for Workers with Youth

RCA Encourages All Institutions Dealing with Jewish Youth to Conduct Criminal Background Checks on Employees, and Advocates Legislation Requiring Same

(Newark, NJ) May 17, 2005 -- Whereas the Rabbinical Council of America ("RCA") acknowledges the U.S. Congress-mandated report, issued by the U.S. Department of Education in June 2004, entitled, "Educator Sexual Misconduct: A Synthesis of Existing Literature", and notes the recommendation in the report that all public and nonpublic schools perform criminal background checks on all employees; and,

Whereas the RCA acknowledges the 1993 National Child Protection Act and 1998 Volunteers for Children Act (Title 42, U.S. Code, Sections 5119a, et seq.), which encourages and allows qualified schools and youth groups access to the FBI national criminal database for the purpose of conducting national criminal background checks on employees and volunteers; and,

Whereas the RCA acknowledges the modern legal trend of many States enacting statutes which require public and nonpublic schools to perform national criminal background checks on their employees and volunteers; and,

Whereas the RCA acknowledges that many private youth groups are also performing national criminal background checks on their employees and volunteers; and,

Whereas the RCA has previously held, in May 2003, a national conference on the issue of sexual abuse, and enacted a resolution condemning abuse, and established an internal disciplinary mechanism within the RCA for responding to abuse allegations; and,

Whereas, the RCA notes that approximately 100,000 Jewish children attend yeshivas and Hebrew day schools in New York State, and more than 200,000 Jewish children attend yeshivas and Hebrew day schools in the U.S. and Canada, and that these children deserve the highest level of physical security and legal protection possible; and,

Whereas the RCA notes the obligation not to stand by the blood of our brothers, and to safeguard our lives exceedingly,

Now, therefore, it is

Resolved that the RCA endorses the continued enactment of legislation that will require all public and nonpublic schools, including yeshivas and Hebrew day schools, to perform national criminal background checks on all employees (and volunteers and contractors who have access to children); and, it is further

Resolved that the RCA specifically endorses the swift enactment of the legislation recently proposed in New York State that will require all nonpublic schools to perform national criminal background checks on all employees (and volunteers and contractors who have access to children); and, It is further

Resolved that the RCA encourages all yeshivas, Hebrew day schools, and all institutions which deal with Jewish youth to establish a cross-institutional disciplinary system that will bar those who have had inappropriate interaction with children of a sexual or violent nature from professional or volunteer access to, or

involvement with, Jewish children, and that an internal registry of such persons be maintained; and, it is further

Resolved that the RCA and its Individual members pledge their cooperation and assistance in promoting the passage of background check legislation; in encouraging compliance with existing background check law and future law; and in establishing a cross-institutional Jewish educational disciplinary system and registry for those described above.



## RCA Seeks to Combat Abuse of Children by Applying Public School Standards to Nonpublic Schools

May 1, 2007 -- Whereas, we, the Rabbinical Council of America, are deeply committed to the health, safety and security of all Jewish children attending yeshivas and Hebrew day schools, which includes their right to be free of any physical, emotional or sexual abuse or violence; and,

Whereas, we embrace the mitzvah of Lo ta'amod al dam *ra'echa*, (Do not stand upon the blood of your brother, Lev. 19:16), and we acknowledge the principle, *BeHezeika DeRabim, Chaishinan Tfei* (when there is an issue that affects the masses, we are vigilant), and how much more so does this principle apply when the health, safety and welfare of school children are affected; and,

Whereas, we acknowledge the devastating affect that even a single act of physical, emotional or sexual abuse can have upon a child, when inflicted by an adult authority figure, and such abuse can have long term serious physical and mental health consequences; and,

Whereas, we note that Rav Yosef Dov Soloveitchik, of blessed memory, writes in "Halachic Man", that his grandfather, Rav Chaim Soloveitchik of Brisk, of blessed memory, was once asked what the function of a rabbi is, and he replied: 'to address the grievances of those who are abandoned and alone, to protect the dignity of the poor, and to save the oppressed from the hands of his oppressor'; and,

Whereas, we acknowledge the legal principle of *in loco parentis*, which provides that during the school day, the yeshiva and day school stand in the shoes of the parents, and owe the children the high degree of care in health, safety and welfare that parents owe their children; and,

Whereas, we acknowledge the legal principle of *parens patriae*, whereby the government always has a legitimate interest in the health, safety, and welfare of its children-citizens, regardless of whether they attend public or nonpublic schools, and this interest is reflected in numerous statutes and judicial opinions; and,

Whereas, we take note of the U.S. Congress-mandated report prepared by the U.S. Department of Education, "Educator Sexual Misconduct" (June 2004), which documents the extent of the problem, and at section 12 strongly recommends for all schools employee background checks, registries of abusive school employees, standardized abuse prevention policies, and other prophylactic measures;

Now, therefore, it is resolved that

We reiterate support for our 2005 convention resolution, Criminal Background Checks for Workers with Youth; and

We generally support the enactment of decent and humane laws that seek to secure and enhance the health, safety and welfare of nonpublic school children; and

We support the application to the nonpublic schools of the health and safety laws currently applicable to public schools, including

mandatory employee fingerprinting and halachically or, legally appropriate background checks; mandatory written school plans and

policies intended to safeguard the life, health, and safety of children, and to prevent physical, emotional and sexual abuse, including appropriate reporting guidelines; mandatory employee registration and disciplinary hearings; mandatory emergency health care, including nursing, modern first aid, and modern medical devices, including, defibrillators; and

We call upon members of the RCA to encourage awareness of these issues with their constituencies so as to facilitate detection of abuse in our community.



## **OPEN LETTER FROM ABUSE VICTIM JOEL ENGELMAN TO THE NEW YORK STATE LEGISLATURE**

*Joel Engelman has filed a civil lawsuit for money damages against the United Talmudical Academy. His story of child sex abuse has been told by, Winston, "A Charge of Double Betrayal in Williamsburg", The New York Jewish Week, September 3, 2008. This is his letter to the New York State Senate and Assembly.*

January 2009

Honorable Members of the New York State Legislature:

My peers and I grew up in the private religious school system, in a Williamsburg, Brooklyn Yeshiva, in the orthodox Jewish community of New York State.

Although I could dwell on areas such as the lack of education we received, I would like to make you aware of the maltreatment and abuses we were subjected to.

About the emotional and physical abuse openly practiced as a matter of policy: from daily beatings and verbal lashings, to physical and psychological torture by teachers, principals, and other school personnel. There were heads banged on doors, a kid was tied to a radiator, and another kid was hung on a wall by his belt loops. I witnessed all of this, and personally experienced some.

I was subjected to another form of abuse that was not general practice, and done secretly. When I was 8 years old, I was sexually abused on a routine basis by my principal, Rabbi Avrohom Reichman, at the United Talmudical Academy.

This abuse has scarred me for life in about every facet of daily living, with long lasting effects such as: depression, anxiety, difficulty sleeping, questions and confusions about identity, flashbacks of abuse, and interpersonal difficulties.

In recent discussion with many adults who have gone through the yeshiva system, it seems that I am far from being the only one to have been sexually abused by school personnel. The numbers are shocking.

Some have told their stories publicly, although most are silent due to communal and social pressures.

Today, the general atmosphere and policy towards physical abuse may have improved, although it is still ongoing on a regular basis and the abusive individuals remain in their positions.

Meanwhile, sex abuse in the schools is treated with a code of silence and denial by the institutions.

For example, the individual who sexually abused me is still teaching and having contact with children on a daily basis, although the school admitted to me its knowledge of other victims of this man.

The reason they can get away with these crimes is because religious and private schools are exempt from the laws and regulations to which public schools are subject.

I have been through extensive therapy and wish and hope to move on with my life and see all of the above in a historical perspective – as part of the past. It is, however, very difficult to do so when I know that innocent and vulnerable children are likely going through experiences similar to mine on a daily basis.

These children, having no voice, depend on the state and its lawmakers to secure their present and future.

Respectfully,

  
Joel Engelman

## **THE YOM KIPPUR RESOLUTION OF OCTOBER 2008/TISHREI 5769**

In the days leading up to Yom Kippur, October 2008, the Executive Committee members of the Jewish Board of Advocates for Children were trying to devise plans for making a better year for children. Chaim Shapiro conceived the idea for a Resolution, and penned the words that follow, with contributions from Mrs. Sherree Belsky, Dr. *Asher* Lipner, Maury Kelman, *Esq.*, and others. The "Yom Kippur Resolution" has been circulating very privately in mostly the orthodox Jewish community in New York. The signatories are doctors, lawyers, rabbis, and above all, **people**, who simply recognize the great need to achieve schools and homes where children are perfectly safe.

### **Mi LaHashem Elai**

"Whoever is for G-d, join me!" Exodus, 32:26

Let us make a Kiddush HaShem (sanctification of G-d's name) and stand up for our children.

On Yom Kippur, we read the Torah portion where incest and other depraved sexual acts are prohibited. It is the first time in history where a code of law officially condemns sexual deviancy. It is read just before Neilah, the final Yom Kippur service.

While for many, it is unclear why we read this portion on Yom Kippur, **THIS** year the explanation may seem apparent. In light of the recent horrific news about child abuse that has rocked our communities, and as a partial fulfillment of our obligation for Teshuva (repentance) on Yom Kippur, we the undersigned resolve that:

We are committed to the undeniable right of children to live and learn in a safe, secure, and happy environment where people they look up to and trust are not threatening their physical, emotional, and mental health and well-being.

We denounce those individuals who act so immorally and dishonorably as **sinner**s against the Torah and its moral values, regardless of whether they are **ill** or evil. They must be immediately removed from their innocent prey.

We will not stand blindly, silently or helplessly while child abuse happens in our communities.

We resolve to do everything in our power to speak up and confront abuse.

We will educate ourselves and protect our children.

We will offer support and/or protection to victims/survivors of child abuse.

We will follow appropriate guidelines for reporting child abuse to legal authorities.

We will support legislation to make our **Yeshivos/schools** safe for all students.

We will work to educate our community to prevent further abuse.

1. Rabbi Allen Shwartz	Congregation Ohav Zedek, NY, NY
2. Rabbi Ari Waldman	Ramat Beit Shemesh, Israel
3. Rabbi Asher Bush	Wesley Hills, NY
4. Rabbi Basil Herring, Ph.D	Exec. V.P., Rabbinical Council of America, New York, NY
5. Rabbi Chaim Wakslak, Ph.D.	Young Israel of Long Beach, N.Y.; Clinical Director, Hebrew Academy for Special Children.
6. Rabbi David Berger, Ph.D.	Dean, Yeshiva University, Revel Graduate School, New York, NY
7. Rabbi Gil Student	Brooklyn, NY
8. Rabbi Harry Maryles	Chicago, IL
9. Rabbi Isaac Mann	Long Beach, New York
10. Rabbi Kenneth Auman	Young Israel of Flatbush, Brooklyn
11. Rabbi Mark Dratch	Executive Committee, Rabbinical Council of America; Pres., JSAFE
12. Rabbi Maury Kelman, JD,	New York, NY
13. Rabbi Meir Rizel	Bayswater, NY
14. Rabbi Moshe Rosenberg	Congregation Etz Chaim of Kew Gardens Hills / SAR Academy, Riverdale, NY
15. Rabbi Nochum Rosenberg	Brooklyn, NY
16. Rabbi Nosson Zvi Farber	
17. Rabbi Perry Schafler LCSW-R	Long Beach, NY
18. Rabbi Shmuel Simenowitz	Project Ya'aleh V'Yavo, Inc.
19. Rabbi Yehoshua Leiman	Brooklyn, NY
20. Rabbi Yisroel Kaminetsky, Menahel (Principal)	Davis Renov Stahler, Yeshiva HS for Boys, Long Island, NY
21. Rabbi Yosef Blau, Mashgiach Ruchani (Spiritual Director)	Yeshiva University, New York, NY
22. Rabbi Ze'ev Smason	<a href="http://www.ourpreciouschildren.org">www.ourpreciouschildren.org</a> , St. Louis MO
23. Dr. Alisa Minkin	West Hempstead, NY
24. Dr. Amy Neustein, Ph.D.	
25. Dr. Batya Lerner	Brooklyn, NY
26. Dr. Chaim Ehrlich, Podiatrist	Brooklyn, NY
27. Dr. Charlotte Rolnick Schwab, PhD	Delray Beach, Florida
28. Dr. Cindy Rosenthal	New York, NY
29. Dr. David Pelcovitz, Ph.D.	Lawrence, NY
30. Dr. Deborah Schuss, Ph.D.	Psychologist, Cedarhurst, New York
31. Dr. Dov Shapiro, MD	Pediatrician, Chicago, IL

32.Dr. Edmond Mukamal, DDS	Woodmere, NY
33.Dr. Elisheva Badache, MD	Highland Park, NJ
34.Dr. Esther Rabinowicz, Ph.D	Prof. of Psychology, Columbia University, New York, NY
35.Dr. Eve Lowenstein, MD	North Woodmere, NY
36.Dr. Henry Klotz	Lawrence, NY
37. Dr. Hylton Lightman	Pediatrician, Lawrence, NY
38. Dr. Jakow Bielski PhD	Jewish Board of Family and Children's Services – Mishkon, Supervising Psychologist
39.Dr. Jill Butler, Director of Primary Care	Assistant Professor of Medicine, Seton Hall University School of Graduate Medical Education, N.J.
40.Dr. Leon Zacharowicz, MD, MA	Child Neurologist and Consultant on Behavioral Disorders
41. Prof. Marci Hamilton, J.D., Ph.D.	Cardozo Law School, New York, NY
42.Dr. Asher Lipner, PhD	Jewish Board of Advocates for Children
43.Dr. Meir Fuchs	Brooklyn, New York
44. Dr. Michael Salamon, Ph.D.	Clinical Psychologist, Hewlett, NY
45. Dr. Michelle Friedman, M.D	Psychiatrist, New York, NY
46.Dr. Moshe Preiser, PhD	Brooklyn, NY
47.Dr. Nachum Binyamin Klafter, MD	University of Cincinnati, Dept. of Psychiatry
48. Dr. Nancy Klotz	Lawrence, NY
49.Dr. Norman Goldwasser, PhD	Miami Beach, FL.
50.Dr. Penina Zilberberg, Ph.D.	Cedarhurst, NY
51.Dr. Richard Sidlow, MD	North Woodmere, NY
52. Dr. Robert W. Lebovits, Ph.D.	Pittsburgh, PA
53.Dr. Roberta Rosenberg Farber	Dept. of Sociology, Stern College for Women, Yeshiva University, N.Y.
54.Dr. Seymour I. Huberfeld M.D	Nassau Queens Pulmonary Assoc., New Hyde Park, New York
55.Dr. Simcha Y. Cohen, Ph.D.	Brooklyn, NY
56. Dr. Vivian Skolnick, PhD	Chicago, IL
57.Dr. Yehoshua Garren, Neurosurgeon	Boston, MA
58.Dr. Yosef Glassman	Harvard Medical School, Boston
59. Dr. Zev Ash, MD	Pediatrician, Cedarhurst, NY
60. Dr. Zev Stern, Ph.D.	
61. Albert Pasik	Great Neck, NY
62. Breindy Sporn, RN	Far Rockaway, NY
63. Leah Schwartz, RN	

64. Leah Marinelli, RN	Monsey, NY
65. Odediah Skolnick, RN	Baltimore, MD
66. Eileen Riman, NP	Ramapo Valley Pediatrics, Suffern, NY
67. Abraham J Schwartz, Dir.	MISHMERES
68. Chaikie Travis, LMSW	Clinical Psychotherapist
69. Chaim Sender, LCSW	Brooklyn, NY
70. Chaya Mermerstein, LCSW,	Family Therapy Instructor, Department of Child & Adolescent Psychiatry, Beth Israel Medical Center
71. Cheryl Friedman, LMSW	Beth Israel Medical Center, therapist, Victim Services Program
72. Lauren Berger LMSW,	Ohel Foster Care Department
73. Lisa Ferentz, LCSW-C, DAPA	Baltimore, Maryland
74. Mary Jo Barrett, LCSW	Center for Contextual Change, Chicago, IL
75. Gail Knopf, MSW	Clinical Social Worker
76. Gavriel Fagin, LCSW	Social worker and Forensic Psychologist, Long Island, NY
77. Howard Reznik, LCSW-C	Senior Manager, Prevention and Education, Jewish Community Services, Baltimore, MD
78. Sherree Belsky, Life Coach	Jewish Board of Advocates for Children
79. Wendy Hoffman LCSW-C	Jewish Community Services, Owings Mills, MD
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81. Gerald P. Gross, Esq.	Cedarhurst, New York
82. Jay J Klein, Esq.	Kew Gardens Hills, NY
83. Michael Leshner, Esq	Co-author with Dr. Amy Neustein, "From Madness to Mutiny"; pro bono attorney for victims of Mondrowitz
84. Moshe Fessel, Esq.	Lawrence, NY
85. Nathan Cohen, Esq.	Attorney
86. Stephen H. Weiner, Esq.	New York, N.Y.
87. Yisroel Tarshish, Esq.	Houston, TX
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89. Abe Belsky	Lawrence, NY
90. Abe Schon Brooklyn, NY	
91. Ada Moseson	Brooklyn, NY
92. Alan Srulowitz	West Hempstead, NY

93. Alana Abramowitz, preschool teacher	Far Rockaway, NY
94. Aliza Belsky	North Woodmere, NY
95. Ally Fulda	Woodmere, NY
96. Sean Fulda	Woodmere, NY
97. Ari Goodman	Cedarhurst, NY
98. Arthur Gober	Long Beach, NY
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100. Aryeh Jacobson	
101. Asher J. Frankel	Far Rockaway, NY
102. Aviva Golombeck	
103. Aviva Levinson	NY, NY
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107. Batyah Michelle Dealbert	
108. Betsy Schrott	New York, NY
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110. Betty Chemiak	Journal Production Editor, PNAS, Baltimore, MD
111. Baruch Pelta	Miami Beach, FL
112. Bracha Goetz	Mentoring Coordinator, Jewish Community Services of Baltimore, MD
113. C.R. Frischling	Baltimore, MD
114. Captain Daniel E. Sosnowik.	N.Y.C. Police Dept., Brooklyn, NY
115. Candice Fishman	Monsey, NY
116. Chaim Forer	Toronto, Canada
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118. Chana Gold	Far Rockaway, NY
119. Chana Srone, M.S. Ed.	
120. Chana Zweiter, Founding Director	Kaleidoscope/The Rosh Pina Mainstreaming Network, Jerusalem, Israel
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125. Chaya Rochel Rokeach	Brooklyn NY
126. Chedva Lax	Brooklyn, NY
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151. Esther Malka Reich	Brooklyn, NY
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162. Kenneth (Chaim) Schulhof	Lawrence, New York

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164. Lea Koplowitz	Brooklyn, NY
165. Leah Drang	Lawrence, NY
166. Leah Russell	Boro Park, NY.
167. Leah Lightman	Lawrence, NY
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169. Linda Stern	Tzfat, Israel
170. Lisa Loew	Woodmere, NY
171. Malka Edery	Brooklyn, NY
172. Malkie Schick	Dallas, TX
173. Marc David Poretsky	Long Beach, NY
174. Mark Bodner	
175. Mark Gold	Lawrence, NY
176. Mark Weiss	Highland Park NJ
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179. Michael Reches	Baltimore MD
180. Michael D. Weiser	New York, NY
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182. Michael Weinstein	
183. Michele Goldenberg-Reinke	
184. Michelle Hardoon	
185. Michelle Bender, B.A., Ed.M.	
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188. Moshe Neiman, LNHA VP of Operations	AristaCare Health Services, South Plainfield, NJ
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190. Mrs. Frada Pasik	Long Beach, NY
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225. Steve Goldberg	Long Beach, New York
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227. Susan Katz	
228. Tania Hammer-UM	Loving Jewish Mom
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234. Wendy D.Millstein	San Diego, CA
235. Yaakov Serle	Yaakov Serle Advertising, Queens,NY

236. Zahava Levi	Brooklyn, NY
237. Zev Belsky	North Woodmere, NY
238. Zippy Fodiman	
239. Zvi Lampert	Cedarhurst, NY
240. Elliot B. Pasik, Esq.	Jewish Board of Advocates for Children, Long Beach, NY