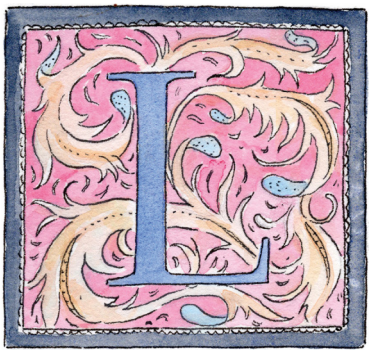
NATHAN J. DIAMENT

Public Funding for Private Education

New legislation could be a major boon for Jewish day school affordability



LONG BEFORE Jews were overrepresented in universities, both as students and faculty, it was the Jews who established education as an imperative. "You shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise" (Deuteronomy 6:7). Later, in the Second Temple Period, Yehoshua ben Gamla made this imperative universal, instituting "an ordinance that teachers of children should be established in each and every province and in each and every town, and they would bring the children in to learn at the age of six and at the age of seven" (Bava Batra 21a).

Twentieth-century American Jews can likewise be proud of having built a Jewish day school system that has proved to be the stron-

gest force for Jewish continuity. Yet, unlike what ben Gamla had in mind, it is far from universal. The high cost of day school education poses a barrier for making this force of Jewish continuity even stronger. Far from ensuring broad access, the system has become available only to a selective few. Arguably, it is as much a financial strain on Jewish communal life as it is a fundamental element in its survival. As the decades-old joke goes, a day school tuition bill is the strongest form of Jewish birth control.

The problem is commonly referred to as a "tuition crisis," implying that schools are charging too much. That is not accurate. Jewish day schools don't have a pricing problem. They have an affordability problem.

Think about what parents (and the community) pay for. Most Jewish day schools offer a dual curriculum, splitting the school day between Jewish and secular subjects. This means that a day school is akin to two schools that happen to be under the same roof. These two schools typically employ separate sets of faculty (unless the Talmud teacher is also teaching chemistry) as well as administrators. These two-schools-in-one share a building and other overhead and back-office costs. So, if a parent took the average day school tuition (about $24,000) and divided it by two — as though she were writing two checks to two schools — the $12,000 puts each tuition right in line with the national average of private school tuitions.

Still, that doesn't make them any more affordable. And given the critical role that educating our children Jewishly plays in their future and that of the community, Jewish leaders and organizations have no choice but to aggressively pursue all avenues to ameliorate the burden.

For leaders of the Orthodox Jewish community — the segment most committed to Jewish schooling — government funding has long been viewed as an attractive and necessary piece of the solu-

tion. Only the government can allocate the funds needed to address the affordability challenge. Orthodox Jewish leaders and organizations have pursued this for decades.

Today, in 2025, I'm cautiously pleased to say that we are at a breakthrough moment when the many years of effort can finally pay off if the Jewish community acts wisely.

A bit of background. For much of the 20th century, American Jewish organizations were divided over proposals to provide government funding to Jewish day schools. Secular organizations, including the Anti-Defamation League (ADL), the American Jewish Congress, and the American Jewish Committee, consistently opposed government funding for any purpose flowing to religious entities including schools. In legal briefs filed with the Supreme Court and in testimony before Congress, these groups argued for "strict separation" of religion and state. This meant that even if a government-funded program operated with criteria that had nothing to do with religion, sectarian entities would still be ineligible to receive those public funds. From the 1940s into the 1980s, this view prevailed at the Supreme Court, blocking government-funding programs for religious schools.

But throughout those decades, the Orthodox Union, Agudath Israel, and other Orthodox groups, as well as faith-based allies, argued against "strict separation" (which does not appear anywhere in the Constitution) and for the principle of government "neutrality" toward religion. This approach contended that government funds may support religious institutions under the First Amendment so long as the government wasn't somehow favoring or advancing any particular religion in doing so. Orthodox groups argued that anything other than neutrality amounted to hostility toward religious institutions and was therefore

unconstitutional. This last point is crucial. The Orthodox position was not exclusively animated by the potential to deliver material benefits to the community. Rather, Orthodox leaders saw it as a necessary component to fight for "equal standing" and against religious discrimination.

Over the course of the 1990s, the "neutrality approach" gradually gained ground at the Supreme Court, and the decisions in cases regarding school aid and other related matters began to shift. In 2002, the court ruled in *Zelman v. Simmons-Harris* that school-voucher programs are constitutional. Over the next 20 years, new Supreme Court majorities overturned precedents embodying "strict separationism" and upheld government funding to religious entities on the basis of neutral criteria. This line of cases culminated in 2022, when the high court held in *Carson v. Makin* that it was unconstitutional for the State of Maine to let parents participate in a tuition-assistance program only if they did not send their children to religious schools.

This jurisprudential landscape and the challenges the American Jewish community currently face have forced most liberal Jewish organizations to adapt. Many have adjusted their positions and become more accepting of government funds flowing to synagogues, day schools, and other religious entities. Whereas the ADL once opposed the creation of the Nonprofit Security Grant Program (which provides federal funds for security costs at shuls and other Jewish institutions), they now join us in arguing for robust congressional funding. In 2020, there was no opposition from Jewish organizations for pandemic relief funds being paid to religious organizations. Fortunately, there is now sufficient consensus in the Jewish advocacy community that we may harness even more support from the government for our needs.

Now that the Supreme Court has largely settled the years-long debate on whether government funding for religious schools is constitutional, debate has shifted to the political branches — Congress

and state legislatures, governors' offices, and the White House. Secular organizations have been replaced by teachers' unions and other entrenched interests. In this new environment, a pragmatic (and sometimes incremental) approach has delivered significant resources for Jewish day schools in many key states.

Nearly 40 states now provide some form of support to nonpublic schools through in-kind services or financial support. For example, New Jersey provides school nurses, while Maryland delivers a per pupil allocation for security costs. In states with the largest Jewish day school populations, even more is given. In Pennsylvania, Ohio, and Florida, Jewish day schools receive six- and seven-figure levels of financial support generated by state tax-credit programs and other sources. In New York, the state with the largest Jewish school population by far, the state provides valuable services (busing, textbooks, and special ed) and direct funding including subsidies for security costs and the salaries of STEM teachers at Jewish and other nonpublic schools. Much of this state funding is the result of persistent Jewish advocacy by the likes of the Orthodox Union and its Teach Coalition project.

While this flow of funds has not dramatically arrested the rise of Jewish day school tuitions, it shows promise in expanding the group of families awarded financial aid. Put another way, it takes aim at the affordability problem rather than the tuition problem.

Still, all of this pales in comparison with the breakthrough moment in which we currently find ourselves, which may lead to a fundamental change in day school affordability.

In July, Congress enacted President Trump's "One Big Beautiful" tax and budget bill. Within its nearly 900 pages was the first and largest federal

funding program to support parents choosing private K–12 schooling. Known as the Educational Choice for Children Act (ECCA), the new law creates a federal tax credit of up to $1,700 for individual contributions to scholarship-granting organizations (SGOs). While earlier versions of the law placed an annual cap on the total amount of credits that could be claimed, determined advocacy ensured that the final bill contained no cap. SGOs can raise an unlimited amount of funds; they just need to do it $1,700 at a time.

This new program is an unprecedented opportunity in scope and scale for the Jewish community to fund Jewish schools and support the families who use them. Consider a local community with three Jewish day schools, each enrolling 500 students from a collective group of 1,000 families. The donations of the parents alone to a joint SGO for that community will yield $1.7 million. Then, if one set of each family's grandparents donates $1,700 to the SGO, that's another $1.7 million. If another 1,000 people can be recruited to donate from local congregations and other groups, that's another $1.7 million. If the SGO then allocates those funds as scholarships on a need-blind, per pupil basis, each student will receive $3,400 off their tuition — double what their parents contributed (at no cost).

Of course, there is considerable work to be done to organize the community to benefit fully from this opportunity. Some key points:

Building community partnerships

The ECCA law requires SGOs to be set up and authorized in each state to operate there (so there can't be a national SGO). And it requires an SGO to provide scholarships to students at a minimum of two schools. That provision alone prods some collaboration in our communities, but more of that should happen anyway. A landscape in which too many SGOs are established in local communi-

ties — competing for contributions and disbursing scholarships based on different criteria — would be inefficient and divisive. At a minimum, rabbis, lay leaders, and Jewish organizations should convene conversations of key leaders and stakeholders to establish the broadest consensus SGO operations possible.

Providing financial stability (and enhancement)

Even with the tremendous promise the ECCA holds, it's not entirely clear how we can best implement it to benefit our communities. The biggest question is how much money will be raised by any SGO — whether in the first year (2027) or subsequent years. The community and its donors must be educated about the program, and a culture of giving must be built. The excitement of the program starting in 2027 might yield $1 million to an SGO, but that could fluctuate in years to come. Day school and yeshiva leaders must be able to plan responsibly and reliably for any shifts in their income flow. For Jewish schools and families to become reliant upon the flow of funds from this landmark program, there must be a stabilizing factor.

National and large communal organizations as well as philanthropic foundations can play a key role in addressing these elements. These larger and influential entities can smooth out the financing of the initial launch years of the program by pledging to provide funds that will backstop the SGOs and establish a baseline amount of funding that will be available for scholarships, even if the fundraising from individual donors falls short of its goal.

Philanthropic partnerships can go further by offering matching funds against what is brought in from the SGOs' individual donations. While the illustration above shows how a community could deliver a $3,400 tuition discount per student, imagine a robust communal "matching" effort fueled by Federation campaigns, family

foundations, and national organizations. Such campaigns and communal commitment could reduce per student tuition by half or more.

Ensuring the funds yield affordability and access

Over the many years during which we have argued that government-funding programs should support Jewish (and other nonpublic) schools, we have routinely been asked by policymakers whether what will actually occur is that the funds will flow to the schools but still leave parents with hefty tuition bills. There have been efforts to address this, but the advent of the ECCA program makes it more essential to deliver a substantial portion of the accrued funds in tuition relief to parents. Again, community leaders and national organizations and funders must exert their leadership and influence on the schools to ensure that happens.

Ongoing advocacy

Even with the historic achievement of passing the ECCA in July, political advocacy must continue. Because the law requires the governors of each state to affirmatively opt that state into participation by annually filing its list of authorized SGOs with Washington, we must persistently lobby governors for that to occur. Moreover, we must urge local governments not to impose conditions on SGOs that will effectively exclude Jewish schools, such as an open-admission requirement for all participating institutions. Relatedly, lobbying efforts must stress that the availability of ECCA-funded scholarships does not lead to the cessation of existing state funding that supports Jewish and other nonpublic schools.

Beyond the state level, there is plenty of advocacy work still to be done in D.C., such as ensuring that regulations on implementing

the ECCA will maximally benefit our communities, and looking for opportunities to improve the legislation and increase the funding allowances.

The enactment of the ECCA is nothing short of a historic opportunity—both for the funding it can provide to the Jewish educational ecosystem and as a pivotal moment to fundamentally reexamine the decades-long funding model of Jewish schools with an eye for revising and improving it.

American Jewish schooling has long been run as a consumer product system. The customers (i.e., parents) pay for the product (school for their kids) with some supplementary assistance from other sources. This model has placed the lion's share of the financial burden on the parents, from when their oldest starts until their youngest graduates.

But we could have a system that views the funding (and the provision) of Jewish education as a communal responsibility. The ECCA's structure requires some of that by its own terms. It incentivizes the community to organize itself for the betterment of all. It is a rare invitation from Washington to tend to our communal cohesion based on what we all value rather than what pulls us apart.

And it is an invitation that the entire community must accept and capitalize on for the sake of our future. ✳

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