



# School acceptance policies

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שו"ת אגרות משה יורה דעה חלק ג סימן עא

עוד עיקר יש לידע שבל יתיאשו כשרואין שאיזה תלמיד אינו לומד כראוי ואף כשאינו מתנהג כראוי, כי אם אינו מקלקל את האחרים צריכים להחזיקו ולהתגלגל עמו דאולי יתחיל לשמוע ולהטיב דרכו, ובכל אופן השהיה איזה שנים בישיבה בקרב מורים יראי ה' ובקרב חברים המקשיבים להמורים ודאי ישפיע גם עליו לכל הפחות במקצת גם על כל ימי חייו. ואל יתחשבו המורים עם קושי העבודה כשצריכים עם תלמידים שאין מקשיבים כראוי שצריכים המורים לידע שעבודתם הוא מלאכת הקדש ואין זה כעבודת חול שהעבודה היא רק למשכירו בשביל שמשלם לו שלכן יש לו להתחשב איך היא עבודתו אם קלה אם כבדה אבל מלאכה זו היא להשי"ת שיש לו לעבוד באמונה לפי צורך התלמידים לא לפי התשלומין, וחזינן מהקרא דהשי"ת רוצה שנהיה עמלים בתורה ובמצות ואין לדמות קיום מצוה שבא בקלות כמי שנזדמן לו אתרוג וקנאו בלא טורח למי שטרח להשיג אתרוג וכדומה בכל מצוה ומצוה ולכן גם בלמוד עם התלמידים אם עמל ביותר הוא חיוב ומצוה דיליה ואף שמצד התשלומין לא היה לו לעמול כל כך אבל מצד חיוב דידיה להשי"ת אחרי שקבל עליו המשרה מחוייב הוא לעמול כפי יכלתו באמת. וידוע עובדא דר' פרידא שעמל להסביר ארבע מאות זימני לתלמיד אחד ולא חס על זמנו ועל טרחתו וקבל שכר היותר גדול שהוא גם על שלא נתיאש וזה תלוי הרבה במדת הסבלנות שכל מורה צריך להשתדל על עצמו במדה זו ביותר. אבל אם התלמיד מקלקל את אחרים ודאי צריך לסלקו אבל צריך לדון זה בכובד ראש ובעיון רב כי הוא כדיני נפשות.

והנה במדינתנו מרוב הברכה שנתן השי"ת יש רצון ותאוה גדולה להנאות עוה"ז בכל התענוגים שקורין לזה גוד טיים שגם זה דבר המקלקל את האדם מאד שמרגיל את יצרו להתאות לדברים שאין צורך בהם ומשחית את מדותיו עד שנהפך לחיה רעה, ומתחלה מבקש לתאותיו איזה דבר היתר מרומה וכשאי אפשר לא ימנע אף באיסור עד שלהצדיק מעשיו נעשה גם לכופר ח"ו וכמאמרם לא עבדו ישראל ע"ז אלא להתיר עריות, והתורה הקפידה מאד על כך בעיקר בחינוך הילדים כדחזינן מדין בן סורר שעל ריבוי תאוה דהיתר חייבתו תורה משום שזה יביא אותו לבסוף להיות ליסטים ורוצח וגם כופר בכל התורה. וגם על זה צריכים המורים להשגיח וללמד להתלמידים איך להתנהג ולדבר עמהם בגנות בעלי התאוה ובשבח הנאה ממעשים טובים שהוא הנאה עולמית שמשבחים אותו בזה וכדומה בהרבה דברים נכונים שמשפיעים עליהם. ואיתא ברש"י על ואכלתם לחמכם

לשובע אוכל קימעא והוא מתברך במעיו שלכאורה תמוה לאיזה צורך הוא ברכה זו דהא נאמר לעיל מזה שהברכה תהיה מרובה שהארץ תתן יבולה והעץ יתן פריו ודיש ישיג את בציר ובציר את זרע ואחר זה נאמר ואכלתם ישן נושן ומפני חדש תוציאו וא"כ הרי יש להם הרבה מה לאכול ויהיה להם שובע אף כשיצטרכו לאכול הרבה, אבל הוא שהאדם השלם אף שיש ברכה מרובה ושפע רב יודע לצמצם תאותיו להנאות הגוף רק למה שיש לו צורך בהם והשפע ברכה שנתן השי"ת יודע שאינו כדי שיוכל להיות בעל תאוה וזולל וסובא אלא כדי שישג בקלות מה שצריך לבריאות הגוף וגם להנאות שיש צורך בהם לפעמים לראות חסדי השי"ת ולימי העונג והשמחה כשבתות וימים טובים ושמחות של מצוה ולכן נתן השי"ת גם ברכה זו שלא יצטרך האדם השלם לעסוק הרבה באכילתו ושתייתו אלא שגם בקימעא שיאכל יתברך שיהיה שבע וטוב לו. והוא להורות שגם כשנותן הקדוש ברוך הוא במדינה ברכה מרובה ועשירות גדולה לא יבא מזה לדון שרצון השי"ת שישתדל להשיג כל הנאות שיכול ע"י הברכה שנתן לו אלא ידע דבכל עת ובכל מקום יהיה הנאותיו רק מתורה ומעשים טובים שיעשה שמזה יש הנאה בעוה"ז ובעוה"ב.

והנה מזדמן לפעמים אשה שהביאה ילדה ללמד ואינה רוצה שילבש ציצית שיש מצדדים שמ"מ יקבלו אותו ללמד ובמשך הזמן אפשר יעשה הלמוד שילבש ציצית ויקיים כל המצות ויש מצדדים שלא יקבלוהו כיון שאינה רוצה שינהגו אתו כמו שצריך להתנהג בהשיבה, הנכון בזה דאף שודאי היה לן ללמד מה שאפשר עם הילד שאינו פושע כלום והתורה שילמד והמצות שיקיים בהשיבה יש ודאי לקות שעי"ז יתגדל גם ליהודי כשר אבל הוא רק ללמד עמו ביחידות, אבל לקבלו בהשיבה במקום שנמצאים הרבה תלמידים אי אפשר כי אף אם הוא באופן שלא יתקלקלו אחרים עי"ז הוא קלקול ממילא שכל אחד ירצה לומר דעות בהלמוד ובהנהגה מכיון שעשו רצון מרשעת זו כן יחשבו שיעשו רצון כל אחד שלדעתו אין ללמד זה ואין לומר זה להילד וגם ברוב הפעמים הוא קלקול לתלמידים אחרים, ולכן אין לקבל לתלמיד כזה בהשיבה ואף שידוע שלא תשכור עבורו מי שילמוד עמו בעצמו ויהיה ילד זה לבטלה והפקר מ"מ הפסד תלמידים האחרים והפסד השיבה בכללה עדיף. ואם מסכימה שבישיבה ילמדו אותו גם ללבש ציצית ולקיים כל דבר רק שידועין שבביתה לא תניח לו ללבש הציצית ולילך בהירמולקע / בכיפה / צריכים לקבלו כי מזה שאמו לא מניחתו בביתה לא יהיה קלקול להשיבה ואף לא להתלמידים כיון שרואין שהמורים מזהירים ללבש ציצית וללכת עם ירמולקע וכדומה ידעו שאמו של ילד ההוא היא מרשעת ואין ללמד ממנה.

### שו"ת אגרות משה יורה דעה חלק ג סימן עז

ג' ובדבר ילדים שאמם נתגרשה מבעלה והלכה לגור עם גוי, שמישהו הכניסם לביתו ושלחם לישיבה, ואחרים טוענים שאין לו אחריות עליהם, הנה הצדק עם זה שהכניסם, שכיון שהם ילדי יהודים מחויבין כל ישראל ללמד עמם תורה אף אם לא ישמרו דרך התורה, שבשביל חשש דלמחר אין לבטל החיוב דלמוד התורה עם תשב"ר =תנוקות של בית רבן=, אבל כל זה אם אין מזה קלקול לילדים אחרים, דאם יש קלקול ח"ו לאחרים, אין להניחם ללמוד בהשיבה. ידידו, משה פיינשטיין.

## Haredi school network fined for discriminating against Sephardim

**West Bank school continues to violate August court order requiring it to eliminate any vestige of ethnic discrimination.**

*Apr. 8, 2010. 4:03 AM*

*by Or Kashti*

The ultra-Orthodox network that runs the Beit Yaakov girls school in the West Bank settlement of Immanuel must pay NIS 5,000 for every day it continues to violate an August court order requiring it to eliminate any vestige of ethnic discrimination at the school, the High Court of Justice ruled Wednesday.

Seventy-four girls, mostly of Ashkenazi origin, have been studying in an adjacent unauthorized school since the court, along with the Education Ministry, called on the school to stop holding separate classes for Ashkenazi and Sephardi students.

Wednesday's ruling came in response to a petition by the head of Noar Kahalacha, an organization that combats anti-Sephardi discrimination, accusing the school of contempt of court. The High Court said the school had authorized the girls' absence.

Noar Kahalacha lawyer Aviad Hacoen called implementation of the court's ruling "an important test of the rule of law."

"It is hoped that the parents of the students and the teachers and all the others involved in the improper discrimination come to their senses," he said.

No response was available from the ultra-Orthodox education network.

The court has scheduled a hearing with the parents of the 74 girls, who will be asked to explain why they should not be viewed as accessories to the violation of the earlier order. They will also be asked whether furniture and equipment from the Beit Yaakov school is being used at the unauthorized institution and whether teachers from Beit Yaakov are being employed, either directly or indirectly, at the new school.

The school administration and municipal council have refused to get involved in proceedings against the parents, prompting the Education Ministry to file a complaint with the police contending that the new arrangement is a violation of the compulsory education law. Several weeks ago the ministry also ordered the unauthorized school closed.

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## No Sephardim Allowed: Discriminatory School Policies in *Halacha*

In the summer of 2010, the State of Israel found itself in an uproar over a court ruling regarding the alleged discrimination against Sephardic children by a school in a haredi town that implemented a policy of segregation between students of different ethnic backgrounds. Since then, several schools in Israel have been implicated in discriminatory acceptance policies and found to routinely reject applications by Sephardic parents seeking to enroll their children.

The delicate issue of school acceptance policies extends beyond the exclusion of students from certain ethnic or religious groups, and it also extends beyond Israeli shores. It has become common in many Orthodox circles for day schools and yeshivos to establish strict and exclusionary admission guidelines, refusing admission to children whose parents do not act or dress in a certain way or who allow certain forms of technology into their homes.

What do halachic sources have to say about school acceptance policies? Are there circumstances in which a school is permitted to refuse to admit students from a certain ethnic background or from families who are halachically observant but fall short of the school's strict standards? Which halachic violations, if any, are at stake when establishing an acceptance policy?

Three different Torah laws need to be considered when devising exclusionary admission policies and deciding whether to accept or reject a student to a Torah educational institution:

- 1) The obligation upon qualified educators to teach Torah, which is neglected when a school unjustifiably rejects a student;
- 2) ואהבת לרעך כמוך — Withholding a Torah education from a student who seeks it may violate the command to treat others the way we would want to be treated;
- 3) מחזיק במחלוקת — Creating discriminatory policies could cause strife and divisiveness among the Jewish People, and could thus potentially violate the prohibition against causing *machlokes* (discord).

## I. The Obligation to Teach

The Rambam in *Sefer Ha-Mitzvos* (*asei* 11) lists the Torah obligation to study Torah established by the verse *ושוננתם לבניך* and explicitly includes within this *mitzva* the obligation to teach: *שצונו ללמוד חכמת התורה וללמדה* (“He has commanded us to study the wisdom of the Torah and to teach it”). He codifies this obligation in *Hilchos Talmud Torah* (1:2), where he writes:

מצוה על כל חכם וחכם מישראל ללמד את כל התלמידים אף על פי שאינם בניו

There is a *mitzva* for each and every scholar among Israel to teach all students, even those who are not his sons...

This obligation is codified in the *Shulchan Aruch*, as well (Y.D. 245:3).

Another source for the obligation to teach Torah is discussed by Rabbenu Yona (*Shaarei Teshuva* 3:19):

You should know that a creature is obligated to be a faithful messenger and intelligent servant in all matters involving the service of his Creator, and a faithful employee is vigilant in his work and oversees the work of his coworkers, keeping his eye on their ways to see if they are working dutifully. He will admonish them and inform them of what they need to do, for his wish and desire is for the work of his Master to be done honestly, and he will therefore support those who perform the work. Our Sages thus teach (Yerushalmi, *Sota* 7:4), “‘Cursed is he who does not uphold’ (*Devarim* 27:26) — a person who learned and studied, taught others and fulfilled the Torah, and has the ability to uphold those who are involved in Torah and *mitzvos* but fails to do so — he is included in, ‘Cursed is he who does not uphold.’”

According to Rabbenu Yona, the warning of *ארור אשר לא יקים* (“Cursed is he who does not uphold”) includes those with the ability to “uphold” Torah through education but who fail to do so. Thus, an institution that unjustifiably rejects a student would be in violation of not only the obligation of *ושוננתם לבניך*, but also the strict warning of *ארור אשר לא יקים*.

It thus behooves us to determine the parameters of this command and see which students an educator or educational institution is permitted to refuse to teach.

### A. תלמיד שאינו הגון — Teaching an Unworthy Student

The Rambam, in the aforementioned passage, establishes an obligation to teach

“all” students (ללמד את כל התלמידים), but he later qualifies this obligation, excluding certain students from an educator’s obligation to teach:<sup>1</sup>

Torah is taught only to a worthy student who conducts himself in a becoming manner, or to someone wholesome.<sup>2</sup> But if he was following an improper path, he should be returned to appropriate modes of conduct and led along the proper path, and he should be checked, and then he should be brought to the study hall and taught. The Sages said: One who teaches an unworthy student is considered as though he threw a stone upon a Markulis...<sup>3</sup>

The Rambam thus considers it a Biblical obligation to teach Torah to every תלמיד הגון נאה במעשיו — every worthy student who conducts himself in a becoming manner — but not to unworthy students.

This distinction between different kinds of students may, at first glance, be questioned in light of the famous story told in the Gemara (*Berachos* 28a) of Rabban Gamliel’s deposition from his role as head of the academy in Yavneh. The Gemara relates that when Rabbi Elazar ben Azarya took over the position, the guard was removed from the entrance to the yeshiva and all students who wished to enter were invited to study. During Rabban Gamliel’s tenure, the Gemara relates, he implemented the policy of כל תלמיד שאין תוכו כברו לא יכנס לבית המדרש — “Any student whose interior does not match his exterior may not enter the study hall.” The Maharsha (based on the Gemara’s comment in *Yoma* 72b) explains אין תוכו כברו as referring to a student bereft of *yir’as Shamayim*. Such a student would certainly fall under the category of תלמיד שאינו הגון, and yet Rabbi Elazar ben Azarya abolished Rabban Gamliel’s policy of barring these students from the academy. Later, the Gemara clearly indicates that Rabbi Elazar’s position was the correct one.<sup>4</sup> Seemingly, then, even a תלמיד שאינו הגון is to be

1. It should also be noted that the *Shulchan Aruch*, in citing the Rambam’s ruling, omits the word כל.
2. We will address the precise meaning of this phrase — או לתם — below.
3. “Markulis” (מרקוליס) is the name of an idol that was formed and worshipped by passersby throwing stones at the site.
4. The Gemara relates that when Rabban Gamliel saw the influx of new students after his policy was overturned, he felt distressed over having limited the dissemination of Torah. He was thus shown in a dream the image of a pristinely white utensil filled with dark ashes, symbolizing the “intrusion” of unworthy students into the pristine realm of Torah. This vision was shown to put Rabban Gamliel’s mind at ease, but the Gemara immediately points out that his policy was nevertheless incorrect (ולא היא ההיא ליתובי) (דעתיה הוא דאחזו ליה).

welcomed into the halls of Torah study and taught Torah, in direct contradiction to the Rambam's ruling.

The debate between Rabban Gamliel and Rabbi Elazar ben Azarya was discussed already by the *Rishonim*. The *Tosfos Ha-Rosh*, commenting on this Talmudic passage, writes that Rabban Gamliel enacted his policy in accordance with the prohibition against teaching a תלמיד שאינו הגון, but Rabbi Elazar ben Azarya maintained that this prohibition applies only לן דאינו הגון — when a student has been determined to fall under this category.<sup>5</sup> In other words, Rabbi Elazar agreed that a תלמיד שאינו הגון should not be admitted into the *beis midrash*, but he felt that students should not be checked before being allowed entry. Whereas Rabban Gamliel required examining each student requesting admission to verify that he was worthy, Rabbi Elazar called for allowing entry to all students except those who have been determined to be unworthy of admission.

Some *Acharonim* noted that this may have been the Rambam's understanding, as well. As cited earlier, the Rambam requires teaching every “worthy student who conducts himself in a becoming manner or to someone wholesome.” It is unclear to what kind of student the Rambam refers when he speaks of a תם (“wholesome” person), but the *Lechem Mishneh* suggests that he refers to a student שאינו ידוע לנו אם הוא טוב או רע — who has not been determined to be worthy or unworthy of admission. The *Lechem Mishneh* proceeds to note the story of Rabban Gamliel and Rabbi Elazar, and he offers the explanation cited above, claiming that according to Rabbi Elazar, a student may be granted admission as long as he is not known to be a תלמיד שאינו הגון.

A different answer is suggested by the *Aruch Ha-Shulchan* (Y.D. 246:21), who explains that the *halacha* forbids teaching a תלמיד שאינו הגון because such a student learns Torah שלא לשמה — for insincere motives. *Tosfos* (*Pesachim* 50b, ד”ה וכאן) distinguishes between two different kinds of insincere study, one of which is permissible, while the other is forbidden. People who learn for the purpose of challenging rabbinic authority or distorting the Torah (לקנטר) should not be taught, whereas those who learn for other ulterior motives, such as to be recognized as scholars, should be encouraged to learn, as מתוך שלא לשמה בא לשמה — they will ultimately come to study for the right reasons. Hence, the *Aruch Ha-Shulchan* suggests, when the Rambam and *Shulchan Aruch* forbid teaching a תלמיד שאינו הגון, they refer to one who is likely to use his knowledge to challenge or misrepresent Jewish tradition. The Gemara in *Berachos*, however, refers to

5. This understanding of Rabbi Elazar's view is also suggested by the *Tosfos Rabbenu Yehuda Ha-Chasid*.



students who applied to learn Torah out of other insincere motives, and such students may be taught, in accordance with Rabbi Elazar ben Azarya's position.

According to the *Aruch Ha-Shulchan*, then, the prohibition of תלמיד שאינו הגון applies only to those who will misuse the Torah they learn, whereas all others, including students without *yir'as Shamayim*, may be taught. However, the *Aruch Ha-Shulchan* concludes his discussion by noting that neither the *Tur* nor the *Shulchan Aruch* spells out this distinction, and he thus leaves this issue unresolved.

We may suggest an additional answer to reconcile the ruling of the Rambam and *Shulchan Aruch* with the view of Rabbi Elazar ben Azarya. The Gemara recounts that Rabban Gamliel's policy applied to a student שאין תוכו כבדו — whose "interior" did not correspond to his "exterior." This means that he acted appropriately, but he did not possess inner *yir'as Shamayim*, and thus his outward conduct did not accurately reflect his inner being.<sup>6</sup> Rabban Gamliel refused to admit such students, whereas Rabbi Elazar advocated a policy accepting all students who conducted themselves appropriately, even if their conduct contrasted with their interior. Accordingly, the Rambam rules that Torah must be taught to every תלמיד הגון נאה במעשיו — every student whose conduct is appropriate, even those שאינו תוכו כבדו, whose exterior does not correspond to their interior. When the Rambam forbids teaching a תלמיד שאינו הגון, he refers to students who act improperly, as such students would not be admitted to the academy even under Rabbi Elazar's policy.

It emerges that according to the *Aruch Ha-Shulchan* the obligation to teach excludes only those who study for the purpose of rejecting and distorting the Torah, whereas according to the approach we suggested, it excludes all those who outwardly conduct themselves improperly.

## B. Rav Moshe Feinstein's Guidelines

Rav Moshe Feinstein fielded numerous questions from institutions faced with very difficult decisions concerning the admission of students from homes that were not halachically observant. He consistently ruled that the determining factor that should govern acceptance policy in such situations is the issue of whether the student in question is likely to exert a negative influence upon his peers. When such influence is anticipated, it is forbidden for a school to accept the student, but absent such concerns, a child who applies must be accepted

6. As mentioned in footnote 4, these students were represented in Rabban Gamliel's dream by the image of a white utensil filled with dark ashes, indicating that his policy referred to those whose conduct was pure and pristine, but whose inner characters were flawed (see Maharsha).

regardless of his or his family's current level of observance. As Rav Moshe writes (*Iggeros Moshe*, Y.D. 3:71):

[Educators] should not despair when they see a student who is not learning properly, and even if he does not act properly, because if he does not negatively influence others, they must keep him [in the school] and work with him, for he might perhaps begin listening and improving his conduct... But if the student negatively influences others, he must certainly be expelled, although this must be discussed with reverence and careful consideration, as it is similar to matters of life and death.

Elsewhere (Y.D. 3:77:3), he addresses the case of a Jewish divorcee who remarried to a non-Jewish man and the children were adopted by a Jewish couple who wished to enroll them in a yeshiva. Rav Moshe ruled that as long as the children do not pose a risk to other students, the yeshiva is obligated to accept them, despite their background:

The one who adopted them is correct [in enrolling them in a yeshiva], for since they are Jewish children, all Israel are obligated to teach them Torah even if they will not observe the path of Torah, for one may not neglect the obligation of teaching schoolchildren because of the concern for the future. But all this applies only if this will not negatively influence other children; if this will negatively influence others, Heaven forbid, then they should not be allowed to learn in the yeshiva.<sup>7</sup>

In a different responsum (Y.D. 3:71), Rav Moshe addresses the case of a mother who wished to enroll her son in a school but refused to allow him to wear *tzitzis*, and he ruled that the school may not accept the student because of the harm his acceptance would cause to the school:

Although we should certainly be teaching the student whatever we can...this is true only of learning with him privately. **But he cannot be accepted to a yeshiva where many other students learn, for even if the case is such that others will not be negatively influenced, this will automatically have a negative effect, as each person will then seek to impose his views on education and policies [in the school]... Additionally, this would most likely negatively influence other**

7. See also O.C. 2:73, where Rav Feinstein writes that if a woman married to a non-Jew wishes to enroll her child in a Jewish school, the school should not accept the child למיגדר מילתא — as a safeguard against intermarriage — and if the child will negatively influence other students, then the child may not be accepted even on the level of strict Halacha.

**students.** Therefore, such a student should not be accepted to the yeshiva, even if it is known that she [the mother] will not hire someone to learn with him privately and this child's time will be wasted... nevertheless the [risk of] loss to the other students and the yeshiva generally overrides [this concern].

If a school accepts a student whose mother forces him to follow a rule that runs in contrast to the established school policy, this opens the door for other parents to similarly enforce their own ideas and policies, which would undermine the institution's educational efforts. As such, the yeshiva may not accept such a student.

Rav Moshe then proceeds to clarify that if the mother agrees to allow her son to wear *tzitzis* in school, the school must accept him, as he does not pose a threat to other students or to the enforcement of school policy. Even though the boy will not be observing *mitzvos* outside of school, the school is nevertheless obliged to teach him, as long as his presence in the school does not threaten to undermine the religious education of other students or the school's overall operations.

It appears that Rav Moshe understood the exception of תלמיד שאינו הגון as intended to protect students from another student's negative influence. In principle, the obligation of ושונתם לבניך requires teaching all students, without exception. The rule of תלמיד שאינו הגון establishes that one who teaches a group of students may not compromise the education and growth of the majority of students by admitting a student who exerts a negative influence upon them. Thus, even students who do not personally follow a Torah lifestyle may be taught, as long as they are not exerting a negative influence upon the others.

Rav Moshe's stance may perhaps reflect the distinction drawn above between outward behavior and a student's inherent religious standing. As long as he does not act improperly in the yeshiva, he does not create a negative influence and should thus be admitted. It is only when he outwardly conducts himself in an improper fashion that he must be expelled in order to protect other students from his influence.

When it comes to acceptance policies, then, schools must exercise extreme caution to ensure that their policies are sincerely designed to avoid negative influences upon the student body, and not for any other reason. As we have seen, unnecessarily rejecting a student violates the Torah's command of ושונתם לבניך, and it may also fall under the curse of ארור אשר לא יקים. Arbitrary policies borne out of chauvinism, elitism, or the personal obsessions of administrators or board members are not valid, as the decision of whether to accept or reject

must be made based solely on the student's potential negative influences on the rest of the student body.

That being said, there are situations in which a school may reject even a well-behaved, religiously-observant student for the sake of the rest of the student body. For example, if a school sets a goal to educate its students according to a particular tradition and set of customs (e.g. Chassidic, Sephardic, or any subgroup thereof), it would be legitimate, at least in principle, to reject students who do not follow these traditions and may thus hamper the school's educational efforts. Needless to say, such decisions must be made very carefully to ensure that no child is denied admission unjustifiably.

A more complex issue is whether it is legitimate for a school to set strict admission policies in order to maintain a rigorous academic standard, on the assumption that lower-caliber students will undermine the ambition of their peers. The sources cited and discussed above make no mention of academic mediocrity as a factor in classifying a student as a תלמיד שאינו הגון, and at first glance, it seems difficult to justify rejecting a student simply because his academic credentials are less than outstanding. On the other hand, one might argue that such policies ultimately work to the benefit of all students, as they ensure that a student does not find himself in a framework in which the standards exceed his capabilities, a situation which would be detrimental to both himself and his peers. As our Sages taught, הכל הולך אחר כוונת הלב, and thus all such decisions must be made after careful consideration of the relevant factors and out of a sincere desire to fulfill the *mitzva* of teaching Torah to Jewish children in the most effective way possible.

A similar question arises concerning *yeshivos* that seek to educate their students according to an especially strict religious standard, beyond the basic obligations of halachic observance. Rav Moshe Feinstein rules (Y.D. 2:35) that schools should make a point of providing their students with *chalav Yisrael* milk, despite the extra cost entailed and despite his ruling that it is technically permissible to drink ordinary milk. He writes that encouraging students to maintain a high standard of halachic observance is included under the obligation of *chinuch*. Therefore, since he maintains that it is preferable to drink only *chalav Yisrael*, providing such milk falls under the school's educational mandate. Accordingly, it might be justified for a school that wishes to train children according to a high halachic standard to refuse children who do not comply with this standard if they will influence other students to violate the school's standards.

It must be emphasized that, as we have seen, several *Rishonim* maintain that a student should be assumed worthy of admission unless it is known that he falls under the category תלמיד שאינו הגון. Accordingly, schools must be very wary of rejecting students based on a mere inkling or general impression that

they might exert a negative influence on the other students, as they may then be in violation of the Torah's command to teach.

## II. ואהבת לרעך כמוך

Unjustifiably rejecting a prospective student not only violates the Biblical command to teach Torah, but might also transgress the command of *ואהבת לרעך כמוך* by withholding a Torah education from someone who requests it and by offending the applicant. This depends on the precise definition and parameters of this command, which is the subject of our discussion in this section.

### A. Rashi and the *Sefer Ha-Chinuch*

Rashi (*Sanhedrin* 84b, *ואהבת לרעך כמוך*, ד"ה) writes in regard to this *mitzva*, "A Jew is forbidden from doing to his fellows only that which he does not wish to be done to himself." This definition of the *mitzva* is likely based upon the famous story of the prospective convert who demanded to be taught the entire Torah as he "stood on one foot," to whom Hillel responded, "Do not do to your fellow that which you dislike; the rest is commentary — go study it" (*Shabbos* 31a). Rashi apparently understood Hillel's remark as referring to the command of *ואהבת לרעך כמוך*, which Rabbi Akiva famously describes as *כלל גדול בתורה* ("the great principle of the Torah").<sup>8</sup> Hillel taught the prospective convert this fundamental command, which subsumes a majority of the Torah's precepts, to satisfy his demand to learn the "entire Torah" in just a few moments. This is how the Maharsha (*Chiddushei Aggados, Shabbos*) understands Rashi's comments.<sup>9</sup>

It appears that according to this view, the command of *ואהבת לרעך כמוך* is defined as a prohibition, rather than an affirmative command. Hillel told the convert that one must avoid doing to his fellow what he himself dislikes, without articulating the converse — an obligation to do for others what one wants for himself. Rashi also speaks of this command with the term *הוזהרו*, referring to a forbidden mode of conduct, as opposed to a command to actively treat others a certain way.

This point is made by the Maharsha, who notes that the command of *ואהבת* appears in the Torah together with the prohibitions of *לא תקם ולא תטר* (taking revenge and bearing a grudge), thus indicating that it refers to conduct that must be avoided, as opposed to an obligatory manner of treating others. Moreover, the Maharsha adds, the Gemara elsewhere (*Bava Metzia* 62a) establishes the

8. *Toras Kohanim* 2:12; *Bereishis Rabba* 24:7; *Yerushalmi, Nedarim* 9:5.

9. It should be noted, however, that in his commentary to this story in *Shabbos*, Rashi explains Hillel's response differently.

famous rule of חייך קודמין לחיי חברך (literally, “Your life takes precedence over your fellow’s life”), which explicitly negates the possibility of a requirement to treat others as kindly as one treats himself. (This *halacha* was stated by Rabbi Akiva regarding his famous ruling that one does not have to share his limited supply of water with his fellow if he would then not have enough to save his own life.) Necessarily, then, the command of ואהבת requires us to avoid doing to others what we would not want done to us, but does not require us to actively treat others the way we treat ourselves.<sup>10</sup>

This also appears to be the position taken by the *Sefer Ha-Chinuch* (243), who writes the following in defining the *mitzva* to “love one’s fellow as yourself”:

The Sages of blessed memory said: “Do not do to your fellow that which you dislike.” And they said in the *Sifrei*, “Rabbi Akiva said: This is a great principle of the Torah,” meaning, many *mitzvos* of the Torah depend upon this, **for one who loves his fellow as himself will not steal his property, commit adultery with his wife, torment him financially or verbally, move his border, or cause him any harm.** Several other *mitzvos* depend on this, as well... One who transgresses this [command] and is not careful regarding the protection of his fellow’s property, and certainly if he knowingly causes him financial damage or causes him any form of distress, has violated this affirmative command, aside from the obligation he has [to compensate] in accordance with the damage he caused...

The *Chinuch* here writes that this command is transgressed through thoughtless disregard of one’s fellow’s property or feelings, strongly suggesting that the *mitzva* of ואהבת requires avoiding hurtful treatment of one’s fellow, as opposed to a requirement to actively treat one’s fellow kindly.<sup>11</sup>

10. The question of how to reconcile the command of ואהבת with the rule of חייך קודמין is implicitly asked by Tosfos in *Sanhedrin* (45a, ד”ה ברור לו מיתה יפה). A thorough discussion of Tosfos’ answer lies beyond the purview of this essay.

11. In the subsequent passage, however, the *Chinuch* indeed suggests that this *mitzva* includes a requirement of proactive, favorable treatment:

The laws of this *mitzva* [are]...that one acts toward his fellow as he acts toward himself — he should show concern for his property, distance anything harmful from him, and when speaking about him, he should speak in praise of him, and he should show concern for his honor... And one who acts toward his fellows with love, peace, and friendship, and seeks their wellbeing and rejoices in their good fortune, regarding him it is said, “Israel — through you I am glorified.”

## B. The Ramban

The Ramban, in his Torah commentary, explains the command of *ואהבת לרעך כמוך* as requiring one to eliminate feelings of envy and genuinely celebrate the success and good fortune of his fellow. Noting the aforementioned halachic principle of *חייך קודמין לחיי חברך*, the Ramban writes that it is impossible to interpret the Biblical command of *ואהבת* to mean that one must treat others as kindly as he treats himself. The Ramban further notes that practically speaking, it is not possible for a person to love others to the same extent to which he cares for himself. He therefore suggests that whereas normally people want their friends to enjoy success and good fortune, but nevertheless feel envious and wish that they themselves would enjoy even greater success, the Torah requires us to overcome such feelings and wish for our fellows' success without any limits. We should celebrate their good fortune as we would our own, without any feelings of jealousy.<sup>12</sup>

## C. The Rambam

The Rambam appears to accept a more literal understanding of the command, “Love your fellow as yourself,” indeed requiring one to treat his fellow with the same kindness and regard that he desires for himself. In *Sefer Ha-Mitzvos (asei 206)*, the Rambam defines this *mitzva* as follows:

... that we love others the way we love ourselves, and that my compassion and love for my brother should be like my compassion and love for myself with regard to his property, body, and everything in his possession or that he wants, and everything that I wish for myself I wish the same for him, and everything I dislike for myself or for those close to me I must dislike for him, as well.<sup>13</sup>

The Rambam similarly writes earlier in *Sefer Ha-Mitzvos (shoresh 4)*, “...as He commanded us regarding compassion, mercy, charity and kindness, which is what is meant when He said, ‘You shall love your fellow as yourself.’” He discusses this *mitzva* further in *Hilchos Dei'os (6:3)*, where he writes that this command requires one “to love each and every person among Israel as himself,” adding, “Therefore, one must speak in praise of him and care for his property the way one cares for his own property and desires his own honor.” Later in *Mishneh Torah*, in *Hilchos Avel (14:1)*, the Rambam writes that acts of kindness such as

12. The Ramban builds upon the syntactical distinction between *לאהוב את*, which would mean truly loving another person as oneself, and *לאהוב ל*, which refers to desiring that others enjoy good fortune just as one desires his own good fortune.

13. It should be noted that this final clause — “and everything I dislike for myself...” — does not appear in standard editions of *Sefer Ha-Mitzvos*, but it appears in the Frankel edition.

visiting the sick, comforting the mourner, burying the dead, escorting guests, and celebrating with a bride and groom are all included under the Biblical command of *ואהבת לרעך כמוך*.

In clear contradistinction to the Maharsha and Ramban, the Rambam understands this *mitzva* as a requirement to treat others kindly, the way we treat ourselves.

This gives rise to the question of how to reconcile this command with the Gemara's explicit ruling of *חייך קודמין לחיי חברך*. How could the Gemara allow one to give priority to his own life over that of his fellow if the Torah requires according our fellow Jews the same level of love and concern that we give ourselves?<sup>14</sup>

The answer to this question emerges from the Rambam's comments in *Hilchos Avel*, where he writes in reference to this *mitzva*, *לל הדברים שאתה רוצה*, — “All the things **which you would want others to do for you**, you must do for your fellow.” According to the Rambam, “Love your fellow as yourself” does not mean that we must treat people the way we treat ourselves; rather, it requires us to treat others the way we would want others to treat us. Thus, in the situation famously discussed by Rabbi Akiva in which a person has only enough water to sustain himself, he is not required to give it to his fellow. If we would interpret *ואהבת* to mean that we must treat one's fellow with the same regard as we treat ourselves, then, indeed, it would be difficult to understand why one is permitted to keep the water for himself. But the Rambam understands this command to mean that we must treat others the way we reasonably expect others to treat us — and certainly no one would expect his fellow to give him his last rations of water at the expense of his own life. Understandably, then, the command of *ואהבת* does not require surrendering one's final drops of water so his travel mate can survive, as it requires only that which one would reasonably want and expect others to do for him.

This understanding of the Rambam's position might also resolve a different question regarding his comments. As mentioned, in *Hilchos Avel*, the Rambam includes under the *mitzva* of *ואהבת* favors such as visiting the sick and comforting mourners. Curiously, however, he also views these *mitzvos* as rabbinic commands. He writes (14:1):

There is an affirmative command issued by the Sages [מצות עשה של דבריהם] to visit the sick, comfort mourners, carry out the dead, bring in the bride, escort guests, deal with all burial needs... Despite the fact that these are all rabbinic commands, they are included under [the command

14. It is interesting to note that the Rambam does not codify the rule of *חייך קודמין* anywhere in *Mishneh Torah*, which itself requires explanation.



of] “Love your fellow as yourself” — all the things which you would want others to do for you, you must do for your fellow.<sup>15</sup>

The question naturally arises as to the Rambam’s intent is classifying these acts of kindness as both rabbinically-ordained commands and part of the Biblical command of *ואהבת לרעך כמוך*. If they are included under the Torah obligation to “love your fellow as yourself,” then why was it necessary for *Chazal* to enact these *mitzvos*?

In light of the definition of *ואהבת* discussed earlier, the answer becomes clear. This Torah obligation requires treating others the way we would want others to treat us. Accordingly, a person who, for whatever reason, prefers that people do not visit him while he is ill or during mourning, for example, would not be required by force of the command of *ואהבת* to extend these favors to others. Since the Biblical command depends upon one’s personal preferences, one who personally prefers not being the beneficiary of kindness would, presumably, not be obligated to extend kindness to others. The Sages therefore enacted an objective requirement to perform these acts of kindness, such that they are obligatory even upon those who would prefer not being on the receiving end of these favors.

A final question which needs to be addressed concerning the Rambam’s view is the Talmudic source for this expanded definition. As noted earlier, in the story of Hillel and the convert, Hillel made reference only to the requirement to avoid mistreating one’s fellow, seemingly interpreting the command of *ואהבת* in this vein. On what basis did the Rambam extend this *mitzva* to include a requirement to actively treat others the way one would want to be treated?

One possibility, perhaps, is the story told by the Gemara in *Kesuvos* (23a) about a group of captured girls who were brought by their captors to Nehardea for ransom. Shmuel’s father made a point of hiring guards to ensure that they were not violated as they waited for their ransom, and Shmuel questioned why this was necessary, in light of the fact that they hadn’t been guarded until then. His father responded, “If these were your daughters, would you be so careless about them?” This response is likely based upon the *mitzva* of *ואהבת לרעך כמוך*, which requires treating one’s fellow with the same care and concern with which he treats himself, perhaps forming a basis for the Rambam’s definition of this *mitzva*.<sup>16</sup>

15. The Rambam makes this point in *Sefer Ha-Mitzvos*, as well (*shoresh 2*).

16. It should be noted that the Rambam indeed describes the *mitzva* of *pidyon shevuyim* (ransoming captives) as a fulfillment of the *mitzva* of *ואהבת* (*Hilchos Matnos Aniyim* 8:10).

Another possible basis for the Rambam’s view is the Gemara’s comment in *Kiddushin*

### D. Loving One's Fellow and Admission Policy

In light of these different approaches to explaining the Biblical command of *ואהבת לרעך כמוך*, let us examine how this *mitzva* might affect the issue of school admission policies.

According to the Rambam, as we saw, one is obligated to treat others the way he anticipates being treated by others. Thus, administrators who set and implement admission policies must honestly consider whether they would want to be subject to their guidelines if they were applying for admission. If the admission standards are reasonable and based upon legitimate factors, such that the administrators themselves would not feel offended if they were rejected due to these guidelines, then implementing such policies would certainly be permissible. If, however, the policies are offensive, then the administrators who reject students may be in violation of the Biblical command of *ואהבת לרעך כמוך*.

At the same time, however, the Rambam's position would also yield a significant leniency, in that the application of *ואהבת* would be dependent upon the administrator's personal feelings in this regard. If he truly would not feel offended by being rejected due to unfair admission policies, then he would not violate the *mitzva* by applying such policies to others.

It is less clear how the *mitzva* of *ואהבת* would affect admission policy according to the view of the Maharsha and *Chinuch*, who, as we saw, define this command as requiring only that we avoid the kind of hurtful or harmful treatment of others that we would not want for ourselves. One might argue that needlessly refusing to accept an applicant is not an offensive act, but rather a failure to do the applicant the favor of admitting him to the institution. As such, it does not violate the prohibition of "Do not do to your fellow that which you dislike." On the other hand, one might argue that just as one can violate the prohibitions of *לא תקם ולא תטור* through inaction, such as by refusing to lend a tool out of spite, one can similarly transgress *ואהבת* by rejecting an applicant for no justifiable reason.<sup>17</sup>

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(41a) that one may not betroth a woman before seeing her, "lest he will see something distasteful in her and she will be distasteful in his eyes, and the Torah said, 'Love your fellow as yourself.'" Here, too, the command of *ואהבת* requires making a proactive effort to show concern for one's fellow. In truth, however, this does not provide any proof for the Rambam, as the Gemara requires one to avoid placing himself in a situation in which he will dislike his wife and thus treat her poorly, which would violate the *mitzva* of *ואהבת*.

17. Recall that the Maharsha's understanding of *ואהבת* is based (in part) on the association implicitly drawn by the Torah between this command and the prohibitions of *לא תקם ולא תטור*.

### III. מחזיק במחלוקת — Forbidden Strife

The Gemara in *Sanhedrin* (110a) establishes the prohibition of מחזיק במחלוקת — engaging in fighting and discord — commenting that such conduct transgresses the Torah prohibition of ולא יהיה כקורח וכעדתו (“He shall not be like Korach and his following” — *Bamidbar* 17:5).

The *Rishonim* debate the question of whether this prohibition should be listed among the 613 Biblical commands. The Rambam (*Sefer Ha-Mitzvos, shorsh* 8) writes that the Gemara made this inference as an *asmachta* (an allusion in the text to a law enacted later by *Chazal*), whereas Rabbenu Yona (*Sha'arei Teshuva* 3:58) cites the Gemara's comment without clarifying that it is meant as an *asmachta*. The *Sefer Ha-Chinuch* (228) cites “the French rabbi” as listing this prohibition among the 613 Biblical commands.

The *She'iltos* (*Korach*, 131) writes the following in describing this prohibition:

It is forbidden for Jews to make a fight, for once a fight is made, people will come to despise one another, and the Torah said (*Vayikra* 19:17), “Do not despise your fellow in your heart.” It goes without saying that a person of lower stature must defer to a person of higher stature; but even a person of higher stature must defer to a person of lower stature in order to avoid a fight, as it says (*Bamidbar* 16:25), “Moshe arose and went to Dasan and Aviram...” And Reish Lakish said, “From here [we learn] that one may not take hold of a fight.” And Rav Yehuda said in the name of Rav, “Whoever takes hold of a fight transgresses a prohibition, as it says, ‘He shall not be like Korach and his following.’”

It appears that the *She'iltos* accepts the simple reading of the Gemara's comment, as establishing a bona fide Torah prohibition, adding that creating strife also leads to the violation of לא תשנא את אחיך — the prohibition against despising a fellow Jew.

Regarding this *mitzva* of לא תשנא, it is worth noting the insightful comments of the *Or Ha-Chayim* (*Vayikra* 19:17) in explaining this Biblical command:

A person should not say that “hatred” means only complete hate whereby one wishes that evil befalls [his fellow] and desires his destruction... The verse thus made a calculated decision to juxtapose [the words] לא תשנא and the word אחיך, to instruct that the measure of the hatred which God prohibits is that which is felt in the context of brotherhood, **and this measure is once he distances [his fellow] from his heart to a small extent, as he has already then fallen from the level of brotherhood,** and he thus transgresses לא תשנא.

Accordingly, an institution that wishes to implement a policy that excludes a certain type of student must very carefully and reverently consider whether such a policy will have the effect of causing strife and animosity among the Jewish People, which is the cause of the destruction of the *Beis Ha-Mikdash* and our ongoing state of exile.