



בית דין צדק
בית הוועד לעניני משפט
BAIS HAVAAD
RABBINICAL COURT



HALACHIC GUIDELINES AMIDST COVID-19 PART II - FURTHER GUIDELINES REGARDING PLAYGROUP TUITION

Reviewed & approved by Rabbi Yaakov E. Forchheimer, shlit"a

This document serves as a continuation to Part 1 which was published in March.

We would like to reiterate that these are only general guidelines. Each specific case may have additional factors that impact the halacha which are not addressed in these guidelines. As with all monetary issues between two parties, the parties have a right to obtain a ruling from an agreed upon authority that has heard the specific details of their case. These guidelines serve to assist those wishing to mutually settle the matter on their own without having their case adjudicated in a formal din torah.

While the guidelines below represent the halachic rights and obligations of the parties, we must be sensitive to the devastating financial consequences that many people are experiencing during these times. Klal Yisroel has always leaned upon their trait of rachmonus and gemilus chessed to carry us through our darkest moments, and one is encouraged to see if they have the place in their hearts to go above the letter of the law even when not strictly required to do so. As mentioned in Part 1, if a morah is relying on these funds for their daily expenditures and a parent has the financial ability to continue paying the full tuition, or any amount more than the recommended p'shara, this would be highly commendable and can be paid from ma'aser funds.

- As mentioned in Part 1, if the Morah is receiving unemployment benefits, the p'shara should be reduced. We have been advised that based on the current rules, it appears that many morahs may receive benefits in excess of the regular tuition amount. If the morah is in fact eligible to receive such benefits, the parents would have no responsibility¹. Accordingly, if it is likely that the morah has the ability to receive such benefits, the morah is obligated to notify the parents of this, and the parents would then be justified in withholding any payments until this becomes clear². Likewise, if she ends up receiving such benefits, she would have to return any p'shara payments she has already received, as well as a portion of March's payment³.
- Many playgroup morahs are providing conference calls and other services for their students. If a parent chooses to have their child use these services, they would be obligated to pay the morah for them. Absent a specific agreement to the price for using these services, they would pay the monetary value of these services⁴. While it is impossible to make a global assessment of the value of such services, and each case must be assessed separately, our general recommendation for such playgroups is to increase the p'shara from the 25% to 33% range as suggested in the original guidelines, to a range of 40% to 50%⁵. (This is based on a daily 45-60 min. conference besides the preparation time.) As previously mentioned, the recommendations are based on the assumption that the playgroups will remain closed for the duration of the year; if they open earlier, the amounts will be recalculated.
- We did not issue guidelines for daycare centers since there are a number of critical distinctions that may reduce (or eliminate) the suggested p'shara. A daycare is structured as a business that provides a service, which has less of a halachic claim for payment when services are not being provided, as opposed to a private morah that is treated as an employee that has greater halachic rights. Also, daycare centers may be continuing to receive government funding in excess of the p'shara amount. Accordingly, we cannot issue any guidance for the general public.
- Even if the parents signed a contract with the playgroup or daycare center that contained language requiring the parents to pay the tuition even in the event of a cancellation, such clauses would not govern this unique situation⁶. There is, however, certain language that would possibly apply even to such a situation.
- In any event, if a morah or daycare is not satisfied with the offered p'shara, they may have the right to decline to accept the payment, and then refuse to accept the child back when the playgroup/daycare resumes.
- Our recommended p'shara assumes that if the morah has an assistant, the morah is likewise continuing to pay her the same prorated percentage that the morah is receiving from the parents.
- The recommended p'shara is only for services that the parents are required to pay for on an ongoing basis. The parents are not being suggested to make any payment for optional services that the parents have the liberty of choosing not to use and pay for at any given time.

1 ואם המורה אינה יכולה לקבל תשלומים מהממשלה עקב החלטתה באופן התנהלות של הגן שלה, וההורים לא ידעו מזה בעת שרשמו ילדם, יעשה שאלת חכם.
2 ובפרט שתשלומים אלו הם מדין פשרה, לא מסתבר להציע להורים לשלם בכה"ג. ואף אם התשלומים מהממשלה יהיו פחות ממה שהמורה רגילה לקבל, אם עכ"פ הם יותר משיעור הפשרה, לא מסתבר להציע להורים לעשות פשרה על השאר.
3 דהיינו נתינה בטעות.
4 פשוט דשירותים אלו אינם קיום שלם של המלאכה הראשונה, ולכן לא שייך לומר שחייב לשלם הכל שעל דעת פסיקה הראשונה עושה. אמנם בודאי חייבים ההורים לשלם בעד זה, דלא גרע מפועל בלא קציצה או עכ"פ כבוד. ונפק"מ אם משלם כפי שעות העבודה של המורה או כפי שיעור ההנאה שההורים מקבלים, ואכמ"ל. אמנם יש לציין דאף אם משלם כפי שיעור ההנאה, לא משערים זה כלפי ההנאה של גן רגיל, דבזמן כזה שלא שייך לשלוח לגן רגיל, שווי שירות כזה נתייקר. ופשוט שהמורה יכולה לפסוק קציצה גבוהה בתחילת החודש, וכל הדיון הוא כשלא פסקה.
5 דהיינו שמשלם בעד השירותים, ועל השאר יעשה הפשרה. ולמשל, אם צריך לשלם 25% בעד השירותים, ועושים פשרה של 33% נמצא דמשלם סך הכל 50%. ובעד השירותים חייב לשלם אף אם המורה תקבל תשלומים מהממשלה. (ובאופן זה שהמורה מקבל שכר בעד שירותים יבדל אצל רואה חשבון - accountant, אודות הגשת הביקוש להממשלה).
6 חדא, דלשנות כאלו בדרך כלל מכוונים למקרים שהילד לא בא לגן מאיזה טעם ולא על מקרים שהגן סגור. ואף אם הלשון כולל גם ציורים כאלו, מכ"מ, בדרך כלל אינו כולל אונס דלא שכיח כלל, במש"כ הרמ"א ס' של"ה ס"א, והמחבר בס' רכ"ה ס"ג, ועי' ברע"א שם בס' רכ"ה.

ראוי הנלמד ש'הגד' ד'ת'ס' והולגה ד'ת'ס'. יצאג אפרים הכהן. פאלינגימאצ'ר