

## Halachic Expectations of an Expensive Daycare

Rabbi Boruch Fried

**Case:** *My children's daycare center is very quick to cancel school for seemingly minor things, such as snow, Erev Yom Tov, In-service days, etc. I am aware that other centers do the same, but this daycare is particularly expensive and for the amount I'm paying I expect them to do better.*

**Question:** **Does a higher price demand better service?**

**Answer:** The Terumas Hadeshen discusses a similar case. A messenger was given a wage well above the average, and then demanded travel expenses on top of that as was the norm for other messengers. The employer contended that the elevated wage was meant to include the travel expenses. Terumas Hadeshen sided with the employer that the extra wages prove that the travel expenses were to be included in the wages and absolved the employer of the travel expenses.

Ketzos Hachoshen [CH" M 331:1] cites this Terumas Hadeshen and rejects his reasoning entirely, because the Gemara [Bava Metzia 83a] clearly indicates that the rule of *minhag*, following common practice, outweighs other circumstantial evidence. He contends that only an outright stipulation can change from the de-facto assumption that the standard customs will prevail.

Nesivos Hamishpat [ibid 332:1] agrees with the Ketzos Hachoshen and explains the Terumas Hadeshen to be referring to a case where they clearly differed in the deal structure from the regular custom, for example by not asking for payment upfront. Once they are not following the standards, we can use circumstantial proof as to what was the intention.

In this case where the only deviation is the inflated price, the daycare center can easily claim that the raised price is due to better facilities, staff, service etc. and cannot be expected to give longer or better hours than the other daycare centers.