

Jews With Special Needs

Approved on April 1, 2025, by a vote of 20-0-1. Voting in favor: Rabbis Aaron Alexander, Adam Baldachin, Pamela Barmash, Emily Barton, Chaya Bender, Suzanne Brody, Nate Crane, Aviva Fellman, David Fine, Joshua Heller, Barry Leff, Amy Levin, Daniel Nevins, Matt Nover, Avram Reisner, Rachel Safman, Robert Scheinberg, Miriam Spitzer, Stewart Vogel, and Raysh Weiss. Voting against: None. Abstaining: Rabbi Meir Szames.

שאלה (Question)

What is the status of Jews with special needs? Are they obligated to observe the mitzvot?

תשובה (Response)

This teshuvah builds on a draft teshuvah of Rabbi Micah Peltz and Rabbi Joel Seltzer on young adults with developmental disabilities in halakhah, and it develops out of my teshuvah on “People with Communication Difficulties Taking on Prayer Leadership and Honors” because a clear statement that Jews with special needs are obligated to observe the mitzvot and are not in the category of *shotēh* is needed.

A person with special needs has difficulties (such as physiological, emotional, or behavioral, or a learning disability or impairment) that cause that individual to require additional or specialized services or accommodations. How do these difficulties have an impact on whether Jews with special needs are obligated to observe the mitzvot?

The classic statement of who is obligated to observe the commandments is articulated in the negative, that is, who is not obligated to observe the commandments:

חוץ מחרש שוטה וקטן כו'. קתני חרש דומיא דשוטה וקטן, מה שוטה וקטן - דלאו בני דעה, אף חרש - דלאו בר דעה הוא.

Except the ḥeresh, the shotēh and the minor etc. [Our Mishnah] speaks of the *ḥeresh* similarly as of the *shotēh* and minor: just as the *shotēh* and minor lack understanding, so *ḥeresh* [means] one who lacks understanding.

(Babylonian Talmud Hagigah 2b)

The *ḥeresh* (the deaf who do not communicate via speech), the *shotēh*, and the minor were exempted from the observance of the mitzvot. As I observed in my teshuvah on the status of the deaf who use sign language, the rabbis of the mishnaic and talmudic period simply could not determine what the mental capacity of a *ḥeresh* was, but starting in the 19th century, due to the increased understanding and awareness of the cognitive ability of the deaf among the hearing and due to the advancements in the education of the deaf, it became clear that the categorization of

the deaf who do not speak as mentally incapacitated was mistaken.¹ Jews who are deaf are responsible for observing the mitzvot.

A minor is educated in understanding and observing the mitzvot, and once a minor reaches the age of mitzvot, a minor is no longer a minor and becomes an adult Jew, responsible for observing the mitzvot.

A *shoteh* is a person who is mentally deranged, as illustrated in Babylonian Talmud Hagigah 3b:²

תנו רבנן: איזהו שוטה? היוצא יחידי בלילה, והלך בבית הקברות, והמקנע את פסותו. איתמר, רב הונא אמר: עד שיהו כולן בבת אחת, רבי יוחנן אמר: אפילו באחת מהן.

Our rabbis taught: What is a *shoteh*? The one who goes out alone at night [a very dangerous action in the time of the Talmud], and the one who sleeps in a cemetery, and the one who tears his clothes. It is stated: Rabbi Huna said, So long as they all take place at one time. Rabbi Yohanan said, Even [only] one of them.

The activities described are the behavior of a person who has lost touch with reality and is behaving in an erratic manner. As the Shulhan Arukh H.M. 35:8 states:

כל מי שנטרפה דעתו ונמצאת דעתו משובשת תמיד בדבר מהדברים
it is anyone who goes out of his mind and his senses are consistently lacking on
any matter...

Our colleague Rabbi James Rosen explains that a *shoteh* “displays the kind of behavior typically associated with emotional disturbances such as psychoses, bizarre or stereotypic actions characterized by self-abuse and inappropriateness of orientation”.³ Our colleague Rabbi Reuven Hammer emphasizes that a *shoteh*’s condition comes and goes and is a mental illness.⁴

None of these three categories apply to Jews with special needs, unless they also happen to be a minor or a *heresh* or a *shoteh*.

¹Rabbi Pamela Barmash, “The Status of the Heresh and of Sign Language,”

<<http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/Status%20of%20the%20Heresh6.2011.pdf>>

²The linguistic data for this may be found in Alexander Kohut, ערוך השלם (Vienna: Menorah, 1926), 8.62b-63a, and the halakhic sources for this is Rabbi Reuven Hammer, “תשובה בעניין טקס בר/בת מצווה לילדים מפגרים,” תשובות ועד ההלכה, כרך ד, עמ' 12-13.

³Rabbi James Rosen, “Mental Retardation, Group Homes and the Rabbi,” *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1991-2000* (Rabbi David Fine; New York: Rabbinical Assembly, 2001), p. 340.

<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/roserose_n_grouphomes.pdf>

⁴Hammer, p. 3.

Our colleague Rabbi Reuven Hammer wrote regarding celebrations for benei mitzvah:

אנו מתירים את ה"טקס" על סמך קביעה הלכתית שילד בעל צרכים מיוחדים הוא כן בר חיוב כל - עוד הוא בר דעת ולכן חייב בכל המצוות ורשאי לעלות לתורה כמו כל ילד אחר - שמגיע למצוות.
We permit the ceremony on the basis of the halakhic determination that a child of special needs is indeed obligated [for the *mitzvot*] since [the child] is cognizant and therefore obligated for all the *mitzvot* and may have an aliyah to the Torah like any other child who has reached the age of *mitzvot*.

Significantly, Rabbi Hammer's ruling equated all young people who have reached the age of *mitzvot*, a ruling with which we agree.

There is a nuance to this that must be taken into account: some with special needs may be challenged in comprehending specific *mitzvot*. The classic exposition of this type of issue is expressed in Maimonides' use of the halakhic category of the *peti* in regard to witness testimony:

הפְּתָאִים בְּיוֹתֵר שְׂאִין מִפִּירִין דְּבָרִים שְׂסוּתָרִין זֶה אֵת זֶה וְלֹא יָבִינוּ עֲנִינֵי הַדָּבָר פְּדָרָךְ שְׂמִבְיָנוּ שְׂאָר עִם הָאָרֶץ. וְכֵן הַמְבַהֲלִים וְהַנְחָפִזִים בְּדַעְתָּם וְהַמְשַׁתְּגָּעִים בְּיוֹתֵר הָרִי אֵלּוּ בְּכָלֵל הַשּׁוֹטִים. וְדָבָר זֶה לְפִי (מֵה) שְׂיִרְאָה הַדִּין שְׂאִי אֶפְשָׁר לְכַוֵּן הַדַּעַת בְּכַתָּב

Severe *peta'im* are those who do not understand when matters contradict each other and are incapable of comprehending a concept as it would be comprehended by people at large. This also applies to the people who are continually unsettled, tumultuous, and insane to an extreme amount, who are in the category of *shoteh*. This matter is dependent on the judgment of the judge since it is impossible to describe the mental and emotional states of people [in a text].

(Maimonides, *Mishneh Torah Hilkhos Edut* [Laws of Testimony] 9:10)

It is only in regards to testimony [that a *peti*] may be disqualified, and the most significant aspect of Maimonides' explanation is at the end of this section. Maimonides specifies that the extent to which a *peti* can give testimony cannot be clearly expressed in writing. It is up to the judge, in personal conversation with a potential witness, to ascertain the witness' ability to testify. This is why Maimonides felt the need to specify "severe *peta'im*" rather than just "*peta'im*", for many *peta'im* are capable to report what they have witnessed. And this offers us the key to how those with special needs are obligated for the mitzvot: they are obligated to the extent they can understand and fulfill mitzvot generally, but there could be specific mitzvot beyond their capacity.

Pesak Din

1. Jews who have special needs are not in the category of *shoteh*.
2. Once they have reached the age of *mitzvot*, Jews who have special needs are responsible for observing the *mitzvot*, with the proviso that there could be specific mitzvot beyond their capacity for which they are exempt.