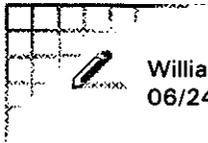


NLWJC - Kagan

DPC - Box 017 - Folder 003

Education - Aguilar



William R. Kincaid
06/24/97 09:27:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Michael Cohen/OPD/EOP
Subject: Title I Decision

At the staff meeting you asked me to check on Department of Education plans to follow up on the **Agostini v. Felton** decision, and the implications of that decision. I will have more on this for you later, but I wanted to update you on what I already know:

-- Currently there are no plans for the Secretary to travel to New York, and soon after the VP's family conference he is headed to Ireland for 8 days. They will discuss this while he is gone and may arrange for him to go up there or otherwise follow up on the decision when he gets back in July.

-- The Department is beginning to work on guidance, to be ready within the next week or so, on the implications of the decision for school districts. Because of the nature of the decision, the guidance will basically be about what districts can do, rather than what they must do. Some of the most important aspects of the guidance will have to do with funds that were specifically appropriated to deal with the costs of implementing the Court's previous decision. Perhaps something could be done in conjunction with the release of the guidance to emphasize the Administration's role in getting the decision reversed.

-- The Department issued one statement yesterday (in addition to the President's), but the counsel's office here made them take out a paragraph on the implications for vouchers. Today, to counteract much of the coverage which treated the decision as a victory for voucher proponents, ED issued a second statement emphasizing the limited nature of the court's decision and the Administration's continued opposition to vouchers.

-- I will fax you both of ED's statements, as well as internal Q's and A's that were prepared in anticipation of the decision, but which their lawyers tell me remain accurate.

UNITED STATES
DEPARTMENT OF EDUCATION



NEWS

For Release
June 23, 1997

Contact: Rodger Murphy
(202) 401-0774

STATEMENT BY U.S. SECRETARY OF EDUCATION RICHARD W. RILEY
On the U.S. Supreme Court's Decision on Agostini v. Felton

I am very pleased that the Supreme Court has overruled its 1985 decision in Aguilar v. Felton. I believe that this decision is a positive step forward for American education and good for the many children who need help in learning the basics of reading and math.

Today's decision by the Court in Agostini v. Felton will allow supplementary Title I instructional services by public school teachers to be provided to children attending parochial schools in their own schools, while requiring that safeguards be in place to ensure that the Title I program remains secular and neutral. This decision will have a positive impact on Title I services for both parochial and public school children by eliminating the legal necessity for costly and less educationally effective alternative arrangements for delivering Title I services to religious school students. Hundreds of millions of dollars have been spent in the past twelve years for mobile vans and other costs relating to providing Title I services for religious school children in locations outside their schools. We can now work to direct this money to the classroom and help many more needy public, private and parochial school children. The Department will issue guidance regarding implementation of the decision.

###

For Release
June 24, 1997

Contact: Rick Miller
(202) 401-3026

**STATEMENT BY U.S. SECRETARY OF EDUCATION RICHARD W. RILEY
On Agostini v. Felton and Vouchers**

The Supreme Court's decision yesterday in Agostini v. Felton did not address the constitutionality of educational vouchers for private school children. The decision only concerned the narrow issue of where Title I teachers employed by the public schools can provide supplemental educational services to parochial school children. Without changing established church-state principles, the Court reached the common sense result of permitting these public, secular, supplemental services to be moved out of vans into school classrooms, with appropriate safeguards to ensure there is no improper appearance of state endorsement of religion. The Administration argued for and strongly supports the Court's decision.

At the same time, the Administration remains firmly opposed, on policy grounds, to educational vouchers. While we support choice within the public school system, private school vouchers would drain much-needed resources from public schools at a time of increasing enrollments and demands on our public school systems. Our limited resources should be focused on improving our public schools, which will continue to serve the overwhelming majority of students. Private school vouchers also would make parochial schools less parochial and private schools less private -- subjecting them to public supervision and compromising their independence.

QUESTIONS AND ANSWERS ON AGOSTINI V. FELTON:

1. What is your reaction to the Supreme Court's decision in Agostini v. Felton?

We are very pleased with the Court's decision. Title I instructional services can now be provided in religious schools. This will benefit both public and parochial school students, because funds will not need to be spent on alternative delivery systems such as mobile vans for private school children.

2. What was the Administration's position in this case?

The Administration asked the Court to overrule its prior decision in Aguilar v. Felton which prohibited public school Title I teachers from providing instructional services in private, religious schools.

3. Why did the Administration take that position?

We felt the 1985 decision was an overly strict interpretation of what the Constitution requires. It was inconsistent with virtually all of the Court's decisions both before and after it was issued. It was also very costly and has been criticized as educationally less effective. Hundreds of millions of dollars have been spent for mobile vans and other costs related to providing Title I services for private school children in locations outside their schools. These costs will no longer be necessary. Our position is consistent with the position which we took in the 1985 case.

4. Doesn't this amount to aid to religious schools?

No. Title I services are supplementary to what parochial school children would otherwise receive and no money flows to any private school. The only question here was where the educational services could be provided by public school employees--inside the private school or at some other less convenient and more expensive location.

5. What was the Administration's position in the lower courts?

We have been on record as supporting efforts to overturn Felton in an appropriate case. Secretary Riley called for the overruling of Felton as early as October of 1995. In the lower courts in this case, our position was simply that those courts could not overturn a Supreme Court decision; only the Supreme Court can do that.

6. Has the Administration's position on vouchers changed?

No. The Administration opposes vouchers for children to attend private schools. We are in favor of choice within the public school system, but we do not believe that public tax dollars should be used to send children to private schools. 90% of all American children go to public school and at a time of record enrollment this is where we need to invest public tax dollars.

7. Doesn't the Court's decision lend support to arguments that private school vouchers are constitutional?

No. The issue here was very different. The issue in Felton was whether providing services in the private schools creates excessive entanglement between government and religion. It did not involve vouchers or any money flowing to private schools or to parents. The control of the Title I program and its funds remains in the public sector. Felton only dealt with the narrow issue of where Title I services could be provided. Voucher programs, on the other hand, raise a variety of other legal issues, most notably whether those programs have the primary effect of advancing religion. The portion of the Court's decision in Agostini concluding that Title I does not advance religion does not break any new ground in the law in this area [CHECK DECISION] and therefore does not lend any new support to the argument that private school vouchers are constitutional.

(NOTE: We have not expressed any views previously on whether private school voucher programs are constitutional, and we are not involved in any of the pending litigation on this issue. It would probably be best to refrain from expressing any views on the constitutionality of vouchers--the analysis depends a great deal on the structure and facts of any specific program.)

8. Did the Administration ask the Court to reconsider its overall approach in Establishment Clause cases? For example, did you ask the Court to discard the three-part test from Lemon v. Kurtzman?

No. We believe that Felton was an aberrant decision that could be overruled on narrow grounds. The Court did not need to, and did not, reconsider its overall approach or overrule Lemon v. Kurtzman. [CHECK DECISION]

9. Isn't this case unique in that the Supreme Court has never previously overruled one of its decisions in the same case?

Yes. However, the Felton decision presented unusual circumstances that resulted in the loss of needed educational services to thousands of school children each year and was not consistent with nearly all of the Court's decisions both before and after the ruling.

10. Won't the Court's decision lead to a flood of litigation where losing parties try to get their decisions overruled.

We don't think so. This case is unusual in a number of respects. There was a continuing injunction against Title I services in private schools despite a clear trend by the Court to be less strict in this area, and five justices took the unusual step of stating in another decision (Kiryas Joel) that Felton should be reconsidered. The court system has safeguards against frivolous efforts to reopen old cases. The Supreme Court could simply decline to hear a case in that situation.

11. Is this process authorized?

Yes. The Court ruled that the vehicle used here (Rule 60(b) of the Federal Rules of Civil Procedure) was an appropriate one. [CHECK DECISION]

12. What will happen to all the mobile vans now in use?

Those decisions will be made by local public school districts, but generally the vans can be used for other educational purposes or disposed of. In many districts, the vans are leased so those districts will just have to end their lease arrangements.

13. What happens to the money appropriated by Congress for the vans and the other costs of implementing Aguilar v. Felton (so-called capital expenses)?

The capital expense funds already appropriated by Congress will still be available for this purpose, including the 41 million dollars that will become available for this purpose on July 1, 1997. Many school districts will continue to incur costs relating to vans and transportation of private school children as a result of the original Felton decision during a transition period. In the long term we hope to shift this funding to the classroom to respond to the increasing demand for Title I services.

14. When can school districts start to provide Title I services in religious schools?

The Supreme Court's decision is effective immediately. (However, in New York City, the injunction will need to be lifted by the district court before Title I services can be provided in religious schools in that school district.) [CHECK DECISION]

(NOTE: With respect to other questions and details about implementation of the Court's decision, the Department will be issuing guidance in the next few weeks.)