



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

October 2, 2000

By Telecopier and U.S. Mail

Fax No. (732) 886-0806

Michael I. Inzelbuch, Esquire  
555 Madison Avenue, Suite – D  
Lakewood, New Jersey 08701

Re: *Response to your Inquiry of September 21, 2000*

Dear Mr. Inzelbuch:

I write to respond to your September 21, 2000 inquiry to me about the religious establishment clause of the U.S. Constitution regarding a judicial officer's ability under the Individual with Disabilities Education Act (IDEA) to require a public school district to pay for a portion (related services as well as non-sectarian special education classes) for a child's placement at a parochial special needs school. The IDEA is administered by the Office of Special Education Programs (OSEP).

The determination of whether a school district's provision of particular services that constitute FAPE violates the establishment of religion clause of the First Amendment of the U.S. Constitution (and any applicable state constitution provisions) is made on a case-by-case basis. The Department has not specifically addressed this issue and does not generally provide advisory opinions on matters that are currently pending in litigation. In addition, the Department does not usually participate in litigation at the trial level as many issues are subject to an initial determination of the findings of fact.

I provided to you by fax on September 20, 2000 information that may be helpful to you in analyzing the issues you identified. As you did not acknowledge receipt of this information, I am confirming that we suggested you review the *Mitchell v. Helms*, *Zobrest*, and *Agostini* decisions by the U.S. Supreme Court as they contain a discussion of relevant factors and analysis. In addition, I transmitted copies of : (1) the Department's Office of Special Education's May 4, 2000 memo regarding private placements generally; and (2) the Department's Office of Elementary and Secondary Education's 1997 guidance on Title I and religious private schools after the U.S. Supreme Court's decision in *Agostini*. If you did not receive this information, please feel free to contact me and we will arrange to retransmit the prior correspondence.

In addition, prior OSEP letters discuss the application of *Zobrest* to issues such as the provision of services to children in parochial private school settings. The following five letters are enclosed for your review: (1) 1993 Letter to Moore, 20 IDELR 1213; (2) 1993 OSEP Letter to Schmidt, 20 IDELR 1224; (3) 1994 Letter to McConnell, 22 IDELR 369; (4) 1994 Letter to Anonymous, 21 IDELR 745; and (5) 1995 Letter to Anonymous, 22 IDELR 889.

Michael I. Inzelbuch, Esquire  
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We trust the previously transmitted information and guidance memos as well as the enclosed OSEP letters will be helpful to you in your analysis.

Sincerely,

A handwritten signature in black ink, appearing to read "Kaja Shah Surprenant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kaja Shah Surprenant  
Attorney,  
Division of Educational Equity and Research

KS/tj  
Enclosures