Journal of Catholic Education

Volume 1 | Issue 3 Article 3

3-1-1998

Agostini v. Felton and the Delivery of Title I Services in Catholic Schools

Charles J. Russo

Allan G. Osborne

Gerald M. Cattaro

Philip DiMattia

Recommended Citation

Russo, C. J., Osborne, A. G., Cattaro, G. M., & DiMattia, P. (1998). Agostini v. Felton and the Delivery of Title I Services in Catholic Schools. *Journal of Catholic Education, 1* (3). http://dx.doi.org/10.15365/joce.0103032013

AGOSTINI V. FELTON AND THE DELIVERY OF TITLE I SERVICES IN CATHOLIC SCHOOLS

CHARLES J. RUSSO
University of Dayton

ALLAN G. OSBORNE, JR.
Snug Harbor Community School

GERALD M. CATTARO
Fordham University

PHILIP DIMATTIA
Boston College

The Supreme Court's recent decision in Agostini v. Felton *is its most important case involving Catholic schools since the landmark 1971 ruling in* Lemon v. Kurtzman. *In* Agostini, *a closely divided Court took the unusual step of overturning its 1985 decision in* Aguilar v. Felton, *which prohibited the on-site delivery of Title I services for students enrolled in religiously affiliated nonpublic schools. In light of the potential ramifications of* Agostini, *this article reviews the Court's rationale in detail before reflecting on how* Agostini *might affect the delivery of educational services under Title I and the Individuals with Disabilities Education Act to students in Catholic schools.*

The Supreme Court's recent decision in *Agostini v. Felton* (1997) is its most important case involving Catholic schools since the landmark 1971 ruling in *Lemon v. Kurtzman.* In *Agostini* a closely divided Court took the unusual step of overturning its 1985 decision in *Aguilar v. Felton* which prohibited the on-site delivery of Title I services for students enrolled in religiously affiliated nonpublic schools. In so doing, the Court's revitalization of the Child Benefit Test is likely to have a dramatic impact on the 4,616 Catholic schools that receive Title I services nationwide (Mahar, 1996).

Catholic Education: A Journal of Inquiry and Practice, Vol. 1, No. 3, March 1998, 263-274

In light of the potential ramifications of *Agostini,* this article is divided into two sections. The first part reviews the holding of *Aguilar* in detail. The second section reflects on how *Agostini* might affect the delivery of educational services under Title I and the Individuals with Disabilities Education Act (IDEA) (1997) to students in Catholic schools.

BACKGROUND

Aguilar v. Felton, one of the more perplexing, and, ultimately, costly rulings of the Supreme Court over the interpretation of the Establishment Clause, was initiated in 1978 when six taxpayers challenged the New York City Board of Education's (NYCBOE) use of Title I funds. Title I of the Elementary and Secondary Education Act, formerly known as Chapter I, was enacted in 1965 to help meet the needs of educationally disadvantaged children from low-income families. The NYCBOE used its federal monies to pay the salaries of public school personnel who provided remedial instruction in reading, mathematics, and English as a second language and guidance services for students in religiously affiliated nonpublic schools.

The NYCBOE instituted safeguards that are now incorporated in guidelines that the United States Department of Education (1997) released subsequent to *Agostini,* in order to ensure compliance with the Establishment Clause. First, only public employees served in the Title I programs. Second, assignments were made without regard to the religious affiliations of the public employees; in fact, in *Agostini,* most of the educators worked in schools that were not of their own faiths, moved among different non-public schools, and typically did not spend a full week in one location. Third, all religious symbols were removed from the locations where Title I services were provided. Fourth, the Title I personnel were supervised by field personnel who made frequent unannounced visits. Fifth, Title I personnel received detailed written and oral instructions directing them to avoid involvement with religious activities, to bar religious materials from their classrooms and work areas, and to minimize contact with staff from the non-public schools. The instructions reminded the public employees that they were accountable only to their own supervisors, that they could teach only those students who were identified by public officials, that their materials and equipment could only be used in Title I programs, that they could not engage in team teaching or other cooperative instructional activities with personnel from the religious schools, and that they could not introduce religious matter into their instruction or take part in religious activities in the schools that they served.

A federal trial court for the Eastern District of New York upheld the NYCBOE's delivery system. Yet, even in conceding that the Title I program had ". . . done so much good and little, if any, detectable harm," (*Felton v. Secretary, United States Department of Education,* 1984, p. 72) the Second

Circuit reversed in finding that the NYCBOE plan violated the Establishment Clause. On further review, Justice Brennan's majority opinion in the Supreme Court's 5-4 ruling in *Aguilar v. Felton* (1985) affirmed. Brennan struck the program down, even though there were no allegations of improper conduct, based on his fear that the system used by the NYCBOE to monitor the delivery of Title I services and the cooperation that were necessary to maintain the programs created excessive entanglement between religion and the government. Justice O'Connor's strident dissent, one of three filed in the case, wherein she unsuccessfully urged the majority not to "throw the baby out with the bath water," served as the foundation for the Court's majority opinion in *Agostini.*

On remand, in September 1985, the same federal district court in New York that ruled in the initial dispute in *Aguilar* enjoined the NYCBOE and the federal government from providing Title I services on-site in religiously affiliated nonpublic schools. Consequently, the NYCBOE and school systems throughout the United States developed alternative delivery systems that spent large sums of money on overhead costs that might otherwise have been spent on instruction. To this end, Justice O'Connor's opinion in *Agostini* pointed out that the NYCBOE spent more than $100 million since the start of the 1986-87 school year on alternative delivery systems in the form of computer-aided instruction, leasing sites and mobile instructional units, and transporting students to these locations (*Agostini,* 1997). More specifically, along with leasing more than 100 mobile units annually at a cost of $106,934 per year per vehicle, including security and the driver's salary, during the 1990-91 school year the NYCBOE paid $280,402 to lease space in neutral sites and an additional $225,711 on other noninstructional costs (*Committee for Public Education and Religious Liberty v. Secretary, United States Department of Education,* 1996; Greenhouse, 1997). In another year the NYCBOE spent more than $6,000,000 on compliance (Brief for the Secretary of Education, 1996).

Along with the overhead costs associated with implementing *Aguilar,* a federal regulation (34 C.F.R. § 200.27 (1996)) created the so-called "off the top" method which requires public school districts to pay the administrative/overhead costs from their Title I funds before they can offer instructional and counseling services. Consequently, the NYCBOE had to deduct some $7.9 million dollars from its Title I budget between the 1986-87 and 1993-94 school years (*Agostini,* 1997). Even with all of these alternative programs in place after *Aguilar,* estimates are that 35% of eligible students did not receive the Title I services that they were entitled to (Mawdsley & Russo, 1983). When one considers that 22,000 of the 259,000 children in New York City, eighty-six percent of whom attended Catholic schools during the 1983-84 school year (*Committee for Public Education and Religious Liberty v. Secretary, United States Department of Education,* 1997) out of a national

population of some 6,000,000 (Greenhouse, 1997) who are eligible for Title I are in nonpublic schools, it is evident that there are large numbers of similarly situated children across the country who may not be receiving services.

The two-pronged challenge in *Agostini* began in 1995 based on Federal Rule of Civil Procedure 60(b) which permits a court to grant relief if newly discovered evidence is discovered or if the earlier judgment is no longer equitable. The first argument advanced by the NYCBOE and the United States Department of Education was that newly discovered evidence relating to the significant additional cost of providing services rendered the ongoing enforcement of the injunction inequitable. Second, the petitioners grounded their claim on an earlier ruling in which the Court decided that a party can have an injunction dissolved under Rule 60(b) if it can establish that case law has changed so much that that which the injunction sought to ban had become legal (*Rufo v. Inmates of Suffolk County Jail, 1992*).

The NYCBOE and United States Department of Education contended that two important legal developments had taken place since *Aguilar.* First, the petitioners noted that a majority of Justices on both sides of *Board of Education of the Kiryas Joel Village School District v. Grumet* (1994) voiced their displeasure with and apparent willingness to overturn *Aguilar.* In *Kiryas Joel,* the Court struck down a New York State law that created a school district for the children of members of the Satmar Hassidic branch of Judaism who needed special education. The Court found that the statute was unconstitutional because the boundaries of the district were the same as those of the religious community within which the children lived. Second, they posited that the Court's own subsequent rulings, such as *Witters v. Washington Department of Services for the Blind,* (1986) and *Zobrest v. Catalina Foothills School District* (1993) undermined the viability of *Aguilar.* In *Witters* the Court upheld the disbursement of vocational aid to a blind student who was preparing for the ministry in a private Christian college on the basis that the assistance was generally available without regard for the sectarian or non-sectarian nature of the school. In *Zobrest* the Court permitted the on-site delivery of a sign language interpreter for a deaf student in a Catholic high school in Arizona on the ground that he, and not the school, was the beneficiary of the services.

The federal trial court acknowledged the controversy surrounding *Aguilar* following *Kiryas Joel* but observed that the legitimate questions about the viability of the former notwithstanding, it was still the law. On further review, the Second Circuit affirmed summarily. The Supreme Court agreed to revisit its earlier ruling in *Aguilar* (1985).

MAJORITY OPINION

Justice O'Connor's majority opinion in the Court's five-to-four ruling was

joined by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas. She succinctly identified the issue as whether the " . . . petitioners [are] entitled to relief from the District Court's permanent injunction under Rule 60(b)" (*Agostini,* 1997, p. 2006). Even in conceding that the Court has granted relief if the moving party can demonstrate that there has been a significant change either in factual conditions or the law, she was unwilling to accept the first two of the petitioners' assertions. First, she reasoned that the increase in the cost of delivering Title I services to students in nonpublic schools after *Aguilar* was not a change in factual circumstances since the parties knew that this would occur. Second, she agreed with the trial court judge that the dissatisfaction of a majority of Justices about *Aguilar* in *Kiryas Joel* notwithstanding, there was no reason to believe that the Court had altered its First Amendment jurisprudence.

Instead, Justice O'Connor wrote that the petitioners' chance to obtain relief depended on their ability to demonstrate that the Court's post-*Aguilar* rulings undermined the original decision to the point that it was no longer good law. Therefore, she found it necessary to revisit the rationales in *Aguilar* and its companion case of *Grand Rapids School District v. Ball* (1985). In *Ball,* Justice Brennan's majority opinion struck down a Shared Time program which, like Title I, offered supplementary classes, taught by public school teachers, on-site to students in pervasively sectarian schools largely on ground that it failed the second prong of the *Lemon* test. In *Lemon,* the Court decreed that any time that the government and religion interact, "[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive entanglement with religion" (1971, pp. 612-613). Brennan decreed that the program in *Ball* was unconstitutional even though there was no evidence of misconduct based on his fear that the program risked sending the message that the government endorsed a particular religion.

In reviewing *Aguilar,* Justice O'Connor observed that Brennan's opinion contended that the NYCBOE's monitoring system of Title I created an additional flaw of entanglement that was not present in *Ball.* Brennan argued that the plan created too close a connection between employees of the public and non-public schools which, in turn, could have given rise to political divisiveness since public officials would have to make day-to-day decisions relating to Title I.

Having examined both cases, Justice O'Connor declared that even though the Court did not alter the principles it applies in mediating disputes under the Establishment Clause since *Aguilar,* the assumptions under which it and *Ball* had been decided have been modified in two important ways. The first difference that O'Connor discussed was that, as reflected in *Zobrest,* the Court no longer views the Establishment Clause as an absolute bar against

permitting public employees to work in religiously affiliated schools. Second, as exemplified in *Witters* and *Zobrest,* she ruled that the Court no longer maintains that any and all governmental aid that offers direct assistance to a religiously affiliated educational institution violates the Establishment Clause. She asserted that the grounds that the Court relied on in *Ball* were no longer valid because there was no more reason to suspect that a Title I teacher would depart from assigned duties in order to partake in religious proselytization than there was to believe that the sign-language interpreter in *Zobrest* would engage in similar behavior. Moreover, since there was simply no evidence that the NYCBOE's Title I personnel who worked in religiously affiliated schools attempted to inculcate religion, she expressed her thinly veiled contempt for the notion that the Court had to presume that these educators acted in a manner that was anything but professional.

Justice O'Connor countered Justice Souter's fears vis-à-vis Title I by noting that given his apparent acceptance of lower court rulings that permit its delivery to students in religiously affiliated schools at off-campus locations, his objections were based solely on the unreasonable objection over where instruction took place. She added that the delivery of Title I programs did not inappropriately finance religious indoctrination as there was no significant difference between the instructional programs provided under its auspices and the services of a sign-language interpreter under the IDEA since both are available only to a discrete group of students at whatever school they wish to attend and are supplemental to the regular curriculum.

In examining purported differences between Title I and the IDEA raised in Justice Souter's lengthy dissent, O'Connor reasoned that any distinction based on the former's being offered to groups of students while the latter is based on individualized need is inconsequential. At the same time, she rebuffed three additional differences between the programs that Souter posited. First, she rejected his argument that Title I services are delivered directly to schools rather than students by indicating that funds are sent to local districts which, in turn, provide help to eligible pupils no matter where they attend classes. Second, she countered his concern that Title I subsidized religion not only by responding that its programs are available regardless of whether they are provided in religiously affiliated schools or in neutral locations but also by noting that *Aguilar* seemed to indicate that such delivery is acceptable. Third, she countered his concern that Title I made services available to more students than did the IDEA in *Zobrest* by reminding Souter of precedent wherein the Court has held that if aid is allocated on the basis of neutral, secular criteria and is available to all eligible children regardless of their religious beliefs or where they go to school, it is less likely to advance religion. As such, she ruled that the NYCBOE's Title I program was constitutional since fears over administrative cooperation and political divisiveness expressed in *Aguilar* did not create entanglement problems because they

would have been present regardless of where services were provided.

In light of *Aguilar's* finding that the NYCBOE's Title I program had created excessive entanglement, Justice O'Connor reiterated that the Court considered entanglement both in asking if governmental aid has the impermissible effect of advancing religion and as a factor separate and apart from its effect. Further, she added that the criteria the Court uses to decide if an entanglement is excessive are similar to those used in considering its effects. That is, O'Connor wrote that in considering entanglement, the Court has looked at " . . . the character of purpose of the institutions that are benefited, the nature of the aid that the States provide, and the resulting relationship between the government and religious authority (*Lemon,* 1971, p. 615)." She also observed that the Court has questioned the effect of a law by asking whether the institutional beneficiaries were predominantly religious.

Justice O'Connor conceded that insofar as it is difficult to avoid any contact between church and state, such a relationship is permissible as long as it is not excessive. She wrote that the assumption underlying the Court's earlier fears against entanglement were undermined by *Zobrest's* holding that the mere presence of a public employee in a sectarian school no longer gives rise to the presumption that the individual will inculcate religious values simply by working in a pervasively sectarian environment. She added that since the Court no longer subscribed to this presumption, there was no reason to assume that Title I educators needed constant supervision in the absence of evidence that the unannounced visits by their supervisors were unable to maintain an appropriate level of separation between church and state.

Having found that the NYCBOE's Title I program was not unconstitutional since there was no governmental indoctrination, there were no distinctions between recipients based on religion, and there was no excessive entanglement, she ruled that *Aguilar* and the part of *Ball* that dealt with the Shared Time Program were not good law. Therefore, she asserted that all that remained for the Court was to consider the petitioners' request for relief under Rule 60(b).

At the outset of her review of the petitioners' request for relief, she commended the lower courts for recognizing that despite concerns over the status of *Aguilar* that were voiced in *Kiryas Joel,* they were correct in denying the motion until she and her colleagues ruled on the merits of the case. Further, she rebuffed Justice Ginsburg's position that the Court engage in different analysis based on the fear that it would receive appeals from a wide array of disgruntled parties. She rejected Ginsburg's concern as unlikely to materialize since *Agostini* was advanced in light of changes in the Court's interpretation of the Establishment Clause. In adding that there was no reason to wait for another case to question the *Aguilar* decision, Justice O'Connor reversed and remanded with orders to vacate the trial court's injunction of September 1985.

DISSENTING OPINIONS

JUSTICE SOUTER'S DISSENT

Justice Souter's dissent was joined fully by Justices Stevens and Ginsburg and in part by Justice Breyer. Souter was concerned that the Court ignored a long line of cases that prohibited the state from subsidizing religion. Further, in ignoring an equally lengthy series of rulings that upheld the Child Benefit Test, he argued that the Court's interpretation of *Aguilar-Ball* meant that it no longer preserved a distinction between "direct and substantial aid" on the one hand and help that was "indirect and incidental" on the other. In sum, he was willing to sacrifice the educational needs of children to preserve what he feared was religious indoctrination supported by public funds.

JUSTICE GINSBURG'S DISSENT

In her dissent, which was joined by Justices Stevens, Souter, and Breyer, Justice Ginsburg argued that the Court's own rules did not permit it to rehear *Aguilar* based on the notion that a precedent's being undermined or eroded offers an inadequate basis upon which to challenge a ruling that is no longer equitable. She also contended that the Court should have waited for a more appropriate case under which to review *Aguilar.*

IMPLICATIONS

The Child Benefit Test traces its origins to *Everson v. Board of Education* (1947), the Court's first Establishment Clause case involving education. In *Everson,* the Court permitted the state of New Jersey to reimburse parents of children in religiously affiliated schools for the cost of transportation on the basis that the aid went to the students and not their schools. After reaching its high-water mark in *Board of Education v. Allen* (1968), which upheld a program in New York State that required districts to loan textbooks for secular subjects to students in religious schools, the Child Benefit Test entered into a period of decline. In *Meek v. Pittenger* (1975) and *Wolman v. Walter* (1975), cases from Pennsylvania and Ohio, respectively, the Court struck down parts of plans that would have permitted the on-site delivery of services to students in religiously affiliated schools. The test reached its nadir in *Aguilar* before being rejuvenated in *Witters, Zobrest,* and *Agostini.*

By breathing renewed vigor into the Child Benefit Test, *Agostini* allows public school systems to provide educational services on-site to students in Catholic schools. At the same time, it must be clearly stated that public schools are not required to provide services on-site and that Catholic schools do not have to allow them to provide services on their premises.

Even so, if a Catholic school is unable or unwilling to make space available, this does not relieve a public school district of its responsibility to serve those children. If districts choose to continue to provide services at a neutral site or through computer-assisted instruction, they must not only do so equitably but must comply with all of the operative consultation requirements in federal law. This point is especially important during periods of transition as public schools prepare to deliver services on-site or wait for the expiration of contracts that made services available at neutral locations before transferring programs into Catholic school buildings.

As profound an effect as *Agostini* promises to have on the delivery of Title I services to students in Catholic schools, based on the recent guidance from the United States Department of Education, its impact on special education may be even more dramatic. According to the Department, ". . . the implication of the Court's ruling [in *Agostini*] is that there is no constitutional bar to public school employees providing educational services in private schools under other Federal programs under similar circumstances" (1997, Question 25). Based on *Zobrest* and a spate of lower court rulings, the issue of whether public school districts must provide and fund special education and related services for children voluntarily enrolled by their parents in Catholic schools has been controversial for several years now. The question was more complicated when the children were enrolled in Catholic schools due to the possibility of violating the Establishment Clause if services were provided on-site.

The Supreme Court clarified a major issue in *Agostini* by lifting its ban on providing on-site Title I services in religiously affiliated schools. Moreover, in light of *Agostini* and the guidelines offered by the Department of Education, it is apparent that public school districts may provide special education and related services on the premises of sectarian schools. Even though the ban has been lifted, questions continue as to whether students in Catholic schools have an entitlement to receive the same level of services as their peers in the public schools and whether special education services must be provided on-site.

In the 1997 amendments to the IDEA, Congress declared that school districts may provide services on location at private schools. However, it is important to note that the use of the word *may* indicates that districts are not required to provide on-site services. Therefore, districts have some discretion in how and where they will provide services to students with disabilities who attend religiously affiliated schools. Prior to the enactment of these amendments, several courts had ruled that districts had met their obligations by making services available within the public schools (*Dreher v. Amphitheater, 1992*; *Foley v. Special School District,* 1996; *Goodall v. Stafford County,* 1991; *K.R. v. Anderson,* 1996; *Tribble v. Montgomery,* 1992). And, on further review after *Agostini,* the Fifth Circuit *(Cefalu v. East Baton Rouge,* 1997)

has held that the on-site delivery of services is not required. Conversely, other courts have held that students in non-public schools were entitled to the on-site delivery of services under the IDEA and other federal programs, albeit not necessarily at the same level that they would have received had they been provided in the public schools (*Fowler v. Unified School District,* 1997; *Natchez-Adams School District v. Searing, 1996*; *Russman v. Board of Education,* 1996). Further litigation in this area is likely since the wording in the amendments appears to be far from conclusive.

One objection that public school officials have evoked in relation to providing on-site services is that it is not cost effective. Based on economics, districts generally centralize services for students with low-incidence disabilities. For example, a school district may place all of its students with multiple disabilities in one school so that similar services do not need to be duplicated in several schools throughout the district. This practice has generally been supported by the courts as they understand that limited resources must be spread as widely as possible *(Barnett v. Fairfax County School Board,* 1991). Providing on-site services that are already available within the public schools to one student in a Catholic school can be unduly expensive.

Congress also addressed the problem of the high cost of special education in the 1997 amendments to the IDEA. By asserting that a district is not required to spend more on students in private schools than it does on average for similarly situated children in public schools, Congress limited the amount a district must spend to provide services to pupils in non-public schools. As an example, if sign-language interpreters in a district normally translate for two students, it would be required to pay for only one-half of the cost of an interpreter that translated for one parochial school student.

Assuming that Catholic schools are willing to permit the on-site delivery of IDEA (and Title I) services, there are two counter-arguments to the fears over the increased cost raised by educators in the public sector. The first is that insofar as some services can be delivered on site, special educators and Title I personnel can now report for duty directly in the non-public schools. Consequently, districts are not likely to have to increase expenditures and may even save money as personnel will not have to report to public schools before traveling to religiously affiliated schools. Second, the Court's lifting of the ban against the on-site delivery of services means that public funds that had been spent renting classroom space, operating mobile classrooms, or transporting students to neutral locations can be saved or used for direct instructional costs.

The new amendments will doubtless generate their own surge of litigation. Although it is difficult to predict what courts will do, it is possible that they will rule that students in Catholic schools will have an entitlement to some degree of services. Although *Fowler* was decided before the 1997 amendments were enacted, the basis adopted by the Tenth Circuit appears to

be a reasonable way to resolve the issue. Adapting *Fowler* to the requirements of the 1997 amendments, courts may hold that school districts must spend the same amount to provide services to a child enrolled in a Catholic school that it would have spent on that same child if he or she had remained in the public schools.

Questions are sure to arise regarding how a school district determines the average cost of educating a student with disabilities. The *Fowler* court held that school districts must be given broad discretion in calculating the average cost. As long as their basis for such a calculation is rational, it should be approved by the court.

It seems clear that students with disabilities attending Catholic schools are entitled to some level of special education and related services. However, they are not necessarily entitled to the same level of services they would receive if they attended a public school. Further, public school systems have discretion regarding where and how services will be provided. While public school systems are not precluded from providing services on the premises of schools, they are not required to do so.

Even with the opportunity to permit the on-site delivery of services for students, two final, and related, issues remain for leaders in Catholic schools. The first raises concerns over the extent to which Catholic schools are willing to permit the federal (and state) governments to encroach in the operations of their programs. If the old adage that "control follows the dollar" is true, then the more federal money that enters the schools, either directly or indirectly, the greater the risk of surrendering institutional autonomy over programs. The second question is whether Catholic schools are prepared for, or are willing to accept, large numbers of students with disabilities. Given the great cost of retrofitting older schools and making buildings accessible, it may be that the cost of compliance may simply outweigh the benefit of housing federal programs.

CONCLUSION

Now that the Supreme Court has followed through on its promise and has trumped *Aguilar* in *Agostini,* it will be interesting to observe how the ongoing relations between Catholic and public schools continue to evolve. If educators in Catholic and public schools learn to apply *Agostini* wisely by working more closely together, then perhaps all of America's children can benefit.

REFERENCES

Agostini v. Felton, 117 S. Ct. 1997 (1997).

Aguilar v. Felton, 473 U.S. 402 (1985).

Barnett v. Fairfax County Sch. Bd., 927 F.2d 146 (4th Cir. 1991); cert. denied, 502 U.S. 859 (1991).

Board of Educ. v. Allen, 392 U.S. 236 (1968).
Board of Educ. of the Kiryas Joel Village Sch. Dist. v. Grumet, 512 U.S. 687 (1994).
Brief for the Sec'y of Educ. (1996, October Term), Agostini v. Felton. Author.
Cefalu v. East Baton Rouge Parish Sch. Bd., 117 F.3d 231 (5th Cir. 1997).
Committee for Public Educ. and Religious Liberty v. Secretary, United States Dep't of Educ., 942 F. Supp. 842 (E.D.N.Y. 1996).
Dreher v. Amphitheater Unified Sch. Dist., 797 F. Supp. 753 (D. Ariz. 1992).
Everson v. Board of Educ., 330 U.S. 1 (1947).
Felton v. Secretary, U. S. Dep't of Educ., 739 F.2d 48, 72 (2d Cir. 1984).
Felton v. Secretary, U.S. Dep't of Educ., 101 F.3d 1394 (2d Cir. 1996), cert. granted sub nom. Agostini v. Felton, 117 S. Ct. 759 (1997), reversed 117 S. Ct. 1997 (1997).
Foley v. Special Sch. Dist. of St. Louis County, 927 F. Supp. 1214 (E.D. Mo. 1996).
Fowler v. Unified Sch. Dist., 107 F.3d 797 (10th Cir. 1997), vacated and remanded, 117 S. Ct. 2503 (1997).
Goodall v. Stafford County Sch. Bd., 930 F.2d 363 (4th Cir. 1991).
Grand Rapids Sch. Dist. v. Ball, 473 U.S. 373 (1985).
Greenhouse, L. (1997, Jan. 18). Court to consider reversing ban on parochial aid. *N.Y. Times*, pp. 1, 7.
Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq. (1997).
K.R. v. Anderson Community Sch. Corp., 81 F.3d 673 (7th Cir. 1996), vacated and remanded, 117 S. Ct. 2505 (1997).
Lemon v. Kurtzman, 403 U.S. 602 (1971)
Mahar, M. (Ed.) (1996). *NCEA/Ganley's Catholic schools in America.* Silverthorne, CO: Fisher Publishing Co.
Mawdsley, R. D., & Russo, C. J. (1993). Supreme Court upholds religious Liberty, *84 Education Law Reporter, 87,* 877-895.
Meek v. Pittenger, 421 U.S. 349 (1975).
Natchez-Adams Sch. Dist. v. Searing, 918 F. Supp. 1028 (S.D. Miss. 1996).
Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).
Russman v. Board of Educ. of the Enlarged City Sch. Dist. of Watervliet, 85 F.3d 1050 (2d Cir. 1996), vacated and remanded, 117 S. Ct. 2502 (1997).
Title I of the Elementary and Secondary Educ. Act, 20 U.S.C.A. § 2701 et seq. (1997).
Tribble v. Montgomery County Bd. of Educ., 798 F. Supp. 668 (M.D. Ala. 1992).
United States Dep't of Educ. Office of Elementary and Secondary Educ. (July 1997). *Guidance on the Supreme Court's decision in* Agostini v. Felton *and Title I (Part A) of the Elementary and Secondary Education Act.* Author.
Witters v. Washington Dep't of Servs. for the Blind, 474 U.S. 481 (1986).
Wolman v. Walter, 433 U.S. 229 (1975).
Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993).

Charles J. Russo, J.D., Ed.D., is professor and chair of the Department of Educational Administration at the University of Dayton. Allan G. Osborne, Jr., Ed.D., is assistant principal of Snug Harbor Community School in Quincy, MA. Gerald M. Cattaro is director of the Center for Non-Public Education at Fordham University Graduate School of Education. Philip DiMattia, Ph.D., is associate professor in the Department of Education at Boston College. Correspondence concerning this article should be addressed to Charles J. Russo, Department of Educational Administration, University of Dayton, 300 College Park, Dayton, OH 45469-0534.