

In the absence of State laws to the contrary, a State or local educational agency may enter into a contract with a private agency for services provided:

1. The private agency is not an agency which operates a private school;
2. Any instructional services furnished by the private agency will be under the active supervision of the State or local educational agency conducting the project;
3. The State or local educational agency will continue to be responsible for the activities being carried out through the private organization.

It is our opinion that the Boorady Memorial Institute is not a school, but rather an institution that provides a remedial instructional service. Thus, insofar as Federal regulations are concerned a local public school district could contract with the institution.

If I can be of further assistance please call upon me.

Sincerely yours,

JOHN F. HUGHES,

*Director, Division of Compensatory Education.*

Mr. GOODELL. I made inquiry to the Office of Education. We got a somewhat contrary reply with reference to the eligibility for contract with a private operation of this nature. This is a rather critical matter. It does not seem to me that we make very much sense, especially when it is the same committee writing both laws and saying the Federal Constitution prohibits granting of money or contracting of money for a private operation under the Elementary and Secondary Act but the Federal Constitution does not prohibit it under the poverty law.

Mr. HUGHES. The contracting with a private agency that is not a school is a permissible arrangement.

Mr. GOODELL. How can you make such a constitutional distinction, or a distinction under the law as far as that is concerned?

Mr. HUGHES. There are criteria whereby you can establish whether an agency may rent a school within the meaning of the State law or not. In the specific instance that you cited, the agency as we see it would not be judged to be a school, it is an agency providing services.

Mr. GOODELL. I would like this clarified. In both instances I am talking about the personnel running the remedial program are all qualified under the State certification procedure, and you have no problem in that respect. It is just a question that they have an ongoing program and the local board of education would be willing to contract with them to provide this kind of service. It is a service that has been ongoing with poverty money.

The answer that I get from you now is that it cannot continue under Elementary and Secondary Education Act funds.

Mr. HUGHES. As to the authority of OEO and availability of poverty funds, we could not answer on that point, Mr. Goodell.

Mrs. GREEN. I don't understand this. Are you saying, "The private agency is not an agency which operates a private school"? The gentleman from New York is a lawyer. It seems to me that this just invites evasion. If somebody runs a private school and they want to be financed, why could they not set up another nonprofit group and disassociate themselves from the school itself but in fact be the same people?

Mr. HUGHES. Of course, the public school would have the option of whether it felt that there were legitimate arrangements that it would prefer to make with such an agency, so I doubt that an agency would simply adopt a new name and in effect be operating the school to qualify for such contract.