

In spite of all this guidance it has been difficult for us to administer these provisions of this act. There are vigorous parties interested from both directions, you might say, in having us offer broader services in private schools and, on the other hand, in having us offer narrower services in private schools. We are always walking a tight rope in developing what can be done in the context of a private school as well as what can be done for a private school pupil in the context of a public school, although that is a less difficult matter to work with.

We have had innumerable issues of the detail raised by this and tried wherever we could to have them settled by State authorities working with local levels. We occasionally find the Commissioner's Office pulled in to try to work out these problems, but we are talking here in an area which has, although a great deal of definition from the Congress, still not enough definition to settle all the issues and I suspect in the detailed case you are raising here this may be one of those rather exceptional ones where we are having to make policy as we decide the issues.

This is what makes it hard for us. I would like Mr. Hughes to comment further on your specific question.

MR. HUGHES. I think the specific that we encountered in the New York State law was a prohibition that the State law contains against the rendering of any instructional service by a person in the religious garb.

MR. GOODELL. Let me separate the question. I am trying to get into this question and investigate it and I found that there were State problems and there appeared to be no Federal problem. Your testimony today would appear to raise Federal problems as well as State problems.

If we could establish that there is no Federal problem, then I think we can move at the State level to see if we can solve whatever problem there is there.

MR. HUGHES. As we understand this institution, Mr. Goodell, this memorial institute, it does not appear to me to be the criteria of being a school. If that is so, it is an agency that could legally, in our judgment, contract with a local public agency which has a grant under title I to render services to that agency provided those instructional services remain under the supervision and control of the local agency.

MR. GOODELL. I think New York State has taken a varying view as to whether it is a school. I go back to what Mrs. Green referred to earlier, it is a rather tenuous distinction to make whether it is a school or not.

MR. HUGHES. We certainly have had to make very close decisions in terms of the legality of participation of nonpublic schools in the program. I think this is probably one of those close cases. In the cases that have come to us thus far in terms of contracting with schools which are obviously designated as schools and qualify as schools within the laws of the State, we have ruled that the participation by such schools under a contract with the local education agency would represent the payment of salaries by the local educational agency and therefore would not be legal.

MR. GOODELL. I do not mean to pursue this alone, although I am very interested in the individual case. I raise it, because I think it illustrates the problem that we have here in drawing the line as to what