

DRAFT

November 1, 1999

MEMORANDUM FOR THE PRESIDENT

From: Bruce Reed
Andrew Rotherham

Subject: Kiryas Joel Village Education Situation

This memo is in response to your inquiry as to whether we could assist in the efforts of the Kiryas Joel village in New York to establish a special school district. The issues involved in this case are church-state issues rather than Individuals With Disabilities in Education Act (IDEA) issues and as a result it would be difficult for us to assist the village. In addition, there is widespread bipartisan support for the village on this issue and if a recently passed law does not solve this problem it seems likely that a satisfactory solution will be found.

Kiryas Joel village is in Orange County in upstate New York and part of the Monroe-Woodbury school district. The village is home to approximately 15,000 Satmar Hasidic Jews who follow a strict interpretation of the Torah. Kiryas Joel is the largest concentration of Hasidic Jews in New York outside of the city. There are about 5000 school-aged children in Kiryas Joel and almost all attend private religious schools. Because of the strict tenets of their religion, residents of Kiryas Joel do not want their children attending regular public schools. For example, Hasidic Jews restrict interaction between the sexes including between women and boys so many routine teacher-student interactions in the public schools could be problematic. In addition, villagers are concerned that the distinct dress and customs of the Hasidic students could lead to ridicule.

Approximately 200 students, all with special needs, attend a special public school in the village created to serve them. Most villagers support this arrangement because of the high costs of special education. Although property taxes in Kiryas Joel would partly fund this school, New York's special education formula allows for a relatively high state share of special education expenses. Hence the attraction of establishing a special school district. There is a small minority of villagers who oppose the children being in any type of public school but they have been unable impact the village's decision making on the issue thus far.

Prior to 1985, special needs students from Kiryas Joel attended special education classes provided by the Monroe-Woodbury school district in a building annexed to a parochial school. The 1985 *Aguilar v. Felton* Supreme Court ruling (since overturned by

the 1997 *Agostini v. Felton* ruling) ended this practice and similar activities around the country by stating that sending public school teachers into religious schools violated the establishment clause of the First Amendment. In 1989 after the New York State Court of Appeals ruled that Monroe-Woodbury was not required to provide special education services for the village's children at a neutral site, the state legislature got involved.

In 1989 the New York legislature passed a law to allow Kiryas Joel to operate a special school district coterminous with the villages boundaries to serve the special needs students. The New York State School Boards Association challenged this district as unconstitutional and in 1982 the U.S. Supreme Court agreed in a 6-3 ruling.

Four days after that ruling the legislature enacted a second statute for Kiryas Joel using neutral language that would allow any municipality to establish a separate school district if it met specific population and tax base criteria. Kiryas Joel was the only municipality that met the new criteria and the law specifically barred any municipalities created in the future from forming its own school district. This statute was unanimously struck down in 1997 by the New York Court of Appeals although the court said that the legislature could validly enact a, "truly religion neutral law of general applicability" by creating a law under which Kiryas Joel would only be, "one in a broad array of eligible municipalities."

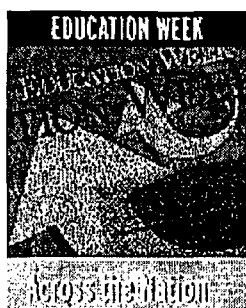
Later in 1997 the legislature enacted a new law which it felt met this criteria. This past May the New York Court of Appeals struck down that law because it potentially benefits only two municipalities. Several weeks ago, the U.S. Supreme Court voted 6-3 not to review this case.

Before the latest U.S. Supreme Court ruling, the New York legislature passed a fourth law, contingent on a Supreme Court denial that expands the criteria for the creation of a special district to apply to as many as 29 municipalities. The village board has already voted to create school district under the latest law.

There is widespread bipartisan support in New York for allowing Kiryas Joel to establish a school district. Governor Pataki and Assembly Speaker Sheldon Silver are both strong supporters. In fact, while he was in the legislature, Pataki sponsored one of the early Kiryas Joel laws. Politically, the villagers are a very powerful force. Groups that generally would be allied with the New York New York State School Boards Association on a church state case of this nature have not gotten involved in this case.

JUNE 25, 1997

EDUCATION WEEK on the WEB



IN CONTEXT

THE ARCHIVES

TEACHER MAGAZINE

THE DAILY NEWS

SPECIAL REPORT

High Court Reverses Ban on Public Aid to Private Schools

By Mark Walsh

Washington

Overtuning a 12-year-old precedent, a deeply divided U.S. Supreme Court ruled this week that the U.S. Constitution does not prohibit school districts from sending teachers into religious schools to provide remedial services to needy students.

"Case Limiting Title I Gets New Day in Court," April 9, 1997.

The 5-4 ruling marked a substantial shift in the direction of permitting more government aid to religion and sparked immediate debate about whether the high court would be receptive to private-school-voucher plans that include church-affiliated schools.

In the near future, the ruling means that the estimated 173,000 children in religious schools nationwide who participate in the federal Title I remedial education program will no longer have to travel to mobile vans, public schools, or other neutral sites to receive services. ("Case Limiting Title I Gets New Day in Court," April 9, 1997.)

"Court To Hear Plea To Revoke Limits on Title I," Jan. 29, 1997.

"No longer will children have to leave their school buildings in order to get the assistance they need," President Clinton said in a written statement praising the court's June 23 ruling in *Agostini v. Felton* (Case No. 96-552).

The Clinton administration supported the effort of the New York City school system to reverse the 1985 Supreme Court ruling that barred public school teachers from providing remedial education on the premises of religious schools.

"Reversal of Ban on Title I Services in Religious Schools Asked," Nov. 6, 1996.

Secretary of Education Richard W. Riley announced that the Department of Education would issue guidance to school districts in the near future about implementing the decision.

"Hundreds of millions of dollars have been spent in the past 12 years for mobile vans and other costs," he said in a statement. "We can now work to direct this money to the classroom."

Three Criteria

In its decision 12 years ago in the case then known as *Aguilar v. Felton*, the high court ruled 5-4 that the practice of sending public school teachers into religious schools violated the First Amendment's ban on government establishment of religion.

"Riley Backs Reversing Title I Felton Ruling," Nov. 1, 1995.

In the majority opinion this week in *Agostini*, Justice Sandra Day O'Connor declared that the 1985 ruling "is no longer good law."

"New York City's Title I program does not run afoul of any of three

Read the full text of the *Aguilar v. Felton* opinion from FindLaw Internet Legal Services.

primary criteria we currently use to evaluate whether government aid has the effect of advancing religion," she said. "It does not result in governmental indoctrination; define its recipients by reference to religion; or create an excessive entanglement" between government and religion.

She was joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia, Anthony M. Kennedy, and Clarence Thomas.

Writing in dissent, Justice David H. Souter said the ruling's result was to "authorize direct state aid to religious institutions on an unparalleled scale, in violation of the establishment clause's central prohibition against religious subsidies by the government."

He said the Title I program has worthy goals, and he acknowledged that the cost of compliance with the 1985 ruling was high.

"But constitutional lines are the price of constitutional government," he said. Justices John Paul Stevens and Ruth Bader Ginsburg signed onto all of Justice Souter's dissent, and Justice Stephen G. Breyer signed on in part.

In a separate dissent, Justice Ginsburg said the majority should not have used the same case from New York City to re-examine the 1985 *Aguilar* ruling. She suggested the majority had pursued an agenda to overturn *Aguilar* and would not let the procedural difficulties of the new case stand in the way.

The three other dissenting justices all signed Justice Ginsburg's opinion.

Grand Rapids Reversal

The ruling was a victory for the New York City board of education, whose Title I program was at issue in both the 1985 *Aguilar* ruling and the court's new decision.

The New York district undertook an unusual legal strategy to return to the Supreme Court after five justices said in a separate 1994 decision that the *Aguilar* ruling should be reconsidered or overturned.

New York City officials invoked a seldom-used court procedure to ask a federal judge for relief from the injunction stemming from the 1985 ruling. The district argued that church-state law had fundamentally shifted since that decision and that the *Aguilar* ruling had been undermined. Both a federal district court and appeals court were sympathetic to the New York district, but they held that only the Supreme Court had the power to overturn one of its precedents. ("N.Y.C. Seeks To Overturn Limits on Title I at Religious Schools," Feb. 28, 1996, and "N.Y.C. Gets Go-Ahead To Seek Felton Reversal," May 29, 1996.)

Justice O'Connor endorsed that view in her opinion and said she doubted that many litigants would use a similar procedure to seek reversal of other high court precedents.

The most surprising element of the majority ruling was that it went further than the relief sought by the New York district or the Clinton administration and overruled part of a companion case to the 1985 *Aguilar* ruling.

In *School District of Grand Rapids v. Ball*, the court struck down two programs a Michigan district implemented to serve private school students, the vast majority of whom attended religious schools. The Grand Rapids district's Shared Time program provided not only remedial instruction to needy students, but also enrichment classes in subjects that were not part of the core curriculum of the private schools.

The high court 12 years ago struck down the Shared Time program on broader grounds than the entanglement rationale used to strike down New York City's policy of sending Title I teachers into religious schools.

The court said in 1985 that the Grand Rapids program created a symbolic union of church and state and impermissibly financed religious schooling by subsidizing the primary religious mission of the sectarian school.

Justice O'Connor wrote that two high court rulings since then have significantly altered the church-state landscape and undermined the *Aguilar* ruling and the part of the *Ball* ruling striking down the Shared Time program.

The first was a 1986 ruling in *Witters v. Washington Department of Services for the Blind*, in which the court upheld a vocational tuition grant for a blind student who wished to use it to attend a Christian seminary. The second was the court's 1993 ruling in *Zobrest v. Catalina Foothills School District*, which authorized a school district to provide a sign-language interpreter for a deaf student attending a Roman Catholic high school. ("2 School Cases Heard by High Court Raise Church-State Issues," March 3, 1993.)

"Zobrest and Witters make clear that, under current law, the Shared Time program in Ball and New York City's Title I program in *Aguilar* will not, as a matter of law, be deemed to have the effect of advancing religion through indoctrination," Justice O'Connor said.

She stressed that the *Aguilar* precedent was not being reversed based on practical complications such as the added expense of using vans. Nor was the reversal based on the views of the five justices calling into question the ruling in a separate 1994 case known as *Board of Education of the Kiryas Joel Village School District v. Grumet*. ("Court Strikes District for Hasidic Sect," July 13, 1994.)

Questions About Vouchers

Justice O'Connor said that a public school program of aid to religious school children would pass constitutional muster provided it included the safeguards that the New York City district employed before 1985. The safeguards included reminders that the public school teachers were accountable to public school supervisors, not private school officials; they served only those children eligible for Title I; they could not engage in cooperative teaching with religious school teachers; and they could not include religious materials in their teaching. Also, all religious symbols were removed from the classrooms used for Title I services.

Lisa H. Thureau, the executive director of the National Committee for Public Education and Religious Liberty, called the ruling "a significant erosion of First Amendment protections."

The New York City-based group, known as PEARL, backed the original lawsuit, filed in 1978, that challenged the district's Title I program in religious schools.

Ms. Thureau also expressed fear that the ruling would be read broadly by advocates of other forms of government aid to religious schools, such as private school vouchers.

The decision "appears to give the green light to voucher initiatives around the country," she said. Indeed, voucher advocates such as Clint Bolick of the Washington-based Institute for Justice wasted no time in hailing the ruling.

"By acknowledging that establishment clause law has significantly changed in the past decade, the court's opinion bolsters school choice advocates' argument that states may give parents educational scholarships to spend at the public or private school of their choice," Mr. Bolick said in a statement.

But Justice O'Connor's opinion said nothing specifically about vouchers and even suggested that government aid that ended up in the coffers of private religious schools would be scrutinized differently by the court.

On the Web

Read the U.S. Department of Education's policies on ["Serving Private School Students With Federal Education Programs,"](#) from its Web site.

See Washington State's [detailed policy](#) on how to comply with the *Aguilar v. Felton* ruling, from the Washington State office of the superintendent of public instruction.

SUBSCRIBE	ABOUT THIS SITE	FEEDBACK	SEARCH THE SITE	JOBS	HOME
---------------------------	---------------------------------	--------------------------	---------------------------------	----------------------	----------------------

© 1997 Editorial Projects in Education

LEVEL 1 - 1 OF 318 STORIES

Copyright 1999 The New York Times Company
The New York Times

October 13, 1999, Wednesday, Late Edition - Final

SECTION: Section B; Page 5; Column 1; Metropolitan Desk

LENGTH: 1012 words

HEADLINE: Hasidic Public School Loses Again Before U.S. Supreme Court, but Supporters Persist

BYLINE: By LISA W. FODERARO

DATELINE: WHITE PLAINS, Oct. 12

BODY:

The United States Supreme Court decided today not to hear an appeal from Kiryas Joel, a Hasidic village in upstate New York, meaning that for the third time the village's quest for its own school district was held to be unconstitutional. But in this case, three strikes does not mean out.

Village and state officials have tried unsuccessfully for a decade to establish a separate public school district to educate its disabled children.

It was the third time that a law passed by New York State to help Kiryas Joel form its own district was struck down by the courts, and the Supreme Court's decision would seem to mean the end for the district, which has been operating a school since 1990 pending numerous appeals.

But a new law passed in August and signed by Gov. George E. Pataki provides an opening for the village to try yet again. This time, the statute, the fourth one drawn by the Legislature, expands the criteria by which new districts can break away from existing ones to such an extent that some experts say it could well survive a legal challenge in the future. In the past, state and Federal courts found the laws unconstitutional because they amounted to a favor for a single religious group.

The mood today in Kiryas Joel was far from despairing. "I would have hoped that the Supreme Court would have taken the case and said once and for all that the children living in Kiryas Joel are eligible to get a proper education," said Abraham Weider, the Mayor of Kiryas Joel, a village of 15,000 in the Monroe-Woodbury school district in Orange County.

"But the bright side is that we now have a much broader statute," Mayor Weider said, "and I haven't heard anybody saying that this doesn't meet constitutional muster. We hope it doesn't even get challenged."

Steven Benardo, Superintendent of the perpetually contested Kiryas Joel

Union Free School District, said, "The motto for us in our school is, 'See you tomorrow.' "

But the New York State Association of School Boards, whose representatives have challenged the first three Kiryas Joel laws on the ground that they flouted the separation between church and state, said it was considering whether to contest the law passed in August permitting break-away school districts. "We're analyzing it right now both in terms of its applicability to Kiryas Joel as well as its constitutionality," said Jay Worona, the association's general counsel.

The Kiryas Joel village board met this afternoon and drafted a resolution applying to the Monroe-Woodbury school district for its own state-financed public school district -- essentially keeping things as they were. Officials of Monroe-Woodbury said today that they continued to support the separate district.

Kiryas Joel's nonhandicapped students have always gone to private yeshivas. Through the mid-1980's, however, its handicapped children had attended special education classes in the Monroe-Woodbury schools, a district of 6,600 students.

Kiryas Joel, whose residents are almost entirely members of the Satmar Hasidic sect, argued that its disabled children, who wear distinctive religious clothing, were subjected to ridicule in the public schools. And in 1988 the village successfully petitioned the State Legislature to create a public school district just for those children.

But the United States Supreme Court declared that law unconstitutional in 1994, and later attempts by the state in 1994 and 1997 to pass laws that avoided the favoritism problem while creating a special district were also found to be unconstitutional. In May, the New York Court of Appeals, the state's highest court, rejected the 1997 law and forced Kiryas Joel to take the case to the Supreme Court.

The decision today by the Supreme Court not to hear the case was a close one, with three members -- Clarence Thomas, Antonin Scalia and Sandra Day O'Connor -- voting to take it. Four votes are necessary.

A spokesman for the State Department of Education, Bill Hirschen, said today that "the village of Kiryas Joel is acting immediately, we're told, to reconstitute the district, and we will monitor their progress in doing so."

Legal experts said the school district was not technically in violation of the law until the Court's written denial of the application is sent down to the Court of Appeals in Albany.

Some opponents of the district voiced concern about the state's latest effort to establish the Kiryas Joel district. The legislation does not identify Kiryas Joel by name. Instead it gives any municipality of 10,000 to 125,000 residents that lies within a larger school district the right to petition for creation of a separate school district and to receive state aid.

Any new district would have to be approved in one of two ways, by voters or by governing boards in both the breakaway municipality and in the larger school district. The Governor's office said at the time of its passage that the new provision was broad enough to potentially affect 29 municipalities.

Marc Stern, a lawyer for the American Jewish Congress, a nonprofit agency in Manhattan that has joined legal challenges of the district, said "the broader the statute gets the greater the possibility that it will survive" a court challenge.

What concerns Mr. Stern now is the precedent that the new law could establish for groups of parents who, he said, might capriciously secede from school districts. "You can imagine the uproar and mischief that would be created here if you had districts drawn along racial or class lines," he said. "No one has argued that that's a good thing. It's all Kiryas Joel driving everything else."

Not everyone in Kiryas Joel wanted the Supreme Court to overturn the appellate ruling, however.

Joseph Waldman, a dissident Satmar leader there who has long opposed a special public district on the ground that the disabled children should also be in religious schools, said: "We hope this will send a message to the Legislature not to help create special laws which are against the interests of the children of Kiryas Joel."

August 18, 1999

SECTION: Special Education; Vol. 3, No. 4

LENGTH: 683 words

HEADLINE: Statute benefiting Hasidic community found unconstitutional

BODY:

In a majority decision, the New York Supreme Court affirmed the Appellate Division's decision, finding that a state statute violated the Establishment Clause of the First Amendment because it impermissibly allowed a Hasidic community to create its own school district.

Background . . . Kiryas Joel is a village comprised of Satmar Hasidic Jews who follow a strict interpretation of the Torah. Their children are educated in single gender parochial schools. Before 1985, the students with disabilities from Kiryas Joel received special education services from the public school district. These services were discontinued as a result of two U.S. Supreme Court cases in which the high court ruled that "publicly funded classes on religious school premises violated the Establishment Clause." Consequently, the public school district stopped offering special education services to Kiryas Joel which resulted in years of litigation. In 1989, the Legislature passed the first of three statutes "in an effort to resolve the longstanding controversy between Kiryas Joel and [the public school district.]" This court determined that Chapter 748 of the Laws of 1989 violated the Establishment Clause of the First Amendment because it lacked the constitutional requirement of neutrality toward religion. The statute created a "public school district" whose boundaries encompassed only Kiryas Joel, in which only Hasidic children would attend the school, and only members of the Hasidic sect would serve on the school board. This was seen by the court as a "symbolic union of church and State . . . [and] likely to be perceived by the Satmarer Hasidim as an endorsement of their religious choices." The Legislature passed a second law, Chapter 241 of 1994. This court again found that statute unconstitutional. Though facially neutral, the practical application of the law would only benefit Kiryas Joel. It was perceived as "an act of governmental favor for the sole benefit of the Satmar sect." Subsequently, the Legislature enacted Chapter 390 of the laws of 1997. In response to the enactment of Chapter 390, also known as "The Kiryas Joel School Bill," several taxpayers sued the Governor and others, challenging the constitutionality of the statute. Both the trial court and Appellate Division found the statute unconstitutional. The Appellate Division determined that Chapter 390 is "yet another improper endorsement by the Legislature in providing the Satmar community the continued existence of a publicly funded exclusive environment in which to educate their children in accordance with their religious preference." The appeals court noted that the Supreme Court has since overruled its previous 1985 decisions. Thus, the public school district is not precluded from offering special education services to students enrolled at the Hasidic parochial schools. The case was

appealed.

Decision . . . In a majority decision, the state supreme court affirmed, finding that Chapter 390 violated the Establishment Clause of the First Amendment of the Constitution because of its impermissible effect in advancing the Hasidic religious sect over other religions. First, the majority found that, although Chapter 390 is facially neutral, it is only applicable to two of the state's 1,545 municipalities. The majority reminds the dissent that to pass constitutional muster a class must be broad to benefit. Moreover, the court found that the eligibility requirements under this statute "are limited in such a way that . . . the statute's benefits . . . flow almost exclusively to the religious sect it was plainly designed to aid." Next, the legislative history indicates that the Legislature crafted Chapter 390 in response to litigation over Chapter 241. Finally, the majority stated that the Supreme Court case which initially set this litigation in motion has been overturned; therefore, the prohibition of educating children with disabilities in an exclusive Satmar setting has been removed. Accordingly, the decision was affirmed.

Grumet v. Pataki, 30 IDLER 592, 3 No. 38, [N.Y. 1999]

LANGUAGE: ENGLISH

LOAD-DATE: August 23, 1999

High Court Issues Stay In Long-Running Kiryas Joel Dispute

By Mark Walsh
Washington

The U.S. Supreme Court has temporarily blocked a New York state court ruling that struck down a state law authorizing the Hasidic Jewish village of Kiryas Joel to maintain its own public school district to serve children with disabilities.

The high court's issuance of a stay last month in *Pataki v. Grumet* (Case No. 98-1932) might signal the justices' willingness to take a new look at the continuing legal controversy over the Kiryas Joel district.

Separately, during the last days of its 1998-99 term last month, the court declined to review the appeal of a church group whose request to use a school for weekend religious services was turned down by a New York City subdistrict. And it ordered a new round of oral arguments in a case from Louisiana involving school board redistricting under the Voting Rights Act of 1965.

In the Kiryas Joel case, the Supreme Court ruled in 1994 that a New York state law establishing a school district for the community of Satmar Hasidic Jews was a form of "religious favoritism" that violated the U.S. Constitution's prohibition against government establishment of religion.

The 1989 state law at issue in the case of *Board of Education of the Kiryas Joel Village School District v. Grumet* had been geared specifically to the Hasidic village about 50 miles northwest of New York City.

Most of the village's 5,000 children attend private yeshivas. The public school district was created to address the needs of about 200 students with serious disabilities.

Struggling for Neutrality

Since the Supreme Court's ruling five years ago, the New York legislature has struggled to aid the village by enacting a neutral law that would allow for the formation of a school district in Kiryas Joel and a small number of other communities in the state.

Two such laws have been struck down by the state courts. Most recently, the New York Court of Appeals, the state's highest court, overturned a 1997 law that authorized municipalities to form their own school districts if they met certain enrollment and population criteria.

The court ruled in May that the law potentially benefits only two of the state's 1,545 municipalities, including Kiryas Joel.

"The non-neutral effect of the statute is to secure for one religious community a unique and significant benefit--a 'public school' where all the students adhere to the tenets of a particular religion--unavailable to other similarly situated communities," the state high court said in a 4-3 ruling.

The ruling meant a possible dismantling of the village district by this summer.

But Republican Gov. George E. Pataki, joined by the Kiryas Joel district and the surrounding Monroe-Woodbury district, appealed to the U.S. Supreme Court for a stay of the state court's ruling.

On June 21, the high court granted the stay, delaying the effect of the New York Court of Appeals' ruling until the justices decide whether to give full consideration to the Kiryas Joel case during their next term.

In their appeal, Gov. Pataki and the school districts argue that the latest law authorizing a district for Kiryas Joel met the test described in concurring opinions by Justices Sandra Day O'Connor and Anthony M. Kennedy in the 1994 Supreme Court case. The two justices went along with striking down the 1989 law that was tailored to the village of Kiryas Joel, but they said a generally applicable statute that employed neutral educational criteria for authorizing the formation of a district would not violate the Constitution.

The justices will likely decide sometime early this fall whether to grant a full review of the Kiryas Joel case.

Church Services

On June 24, the high court declined without comment to hear the appeal of a church based in Far Rockaway, N.Y., that had sued in federal court after a subdistrict of the New York City school system refused to let it rent a school for Sunday worship services.

The Full Gospel Tabernacle was represented by the American Center for Law and Justice, a legal organization formed by the religious broadcaster Pat Robertson. The church argued that the refusal by Community School District 27 in the borough of Queens to rent out a school for weekend services was a violation of its constitutional rights to free speech and free exercise of religion.

The subdistrict rented out its buildings to various other community groups, including the American Legion, labor unions, and religious groups that used the facilities for musical performances. But the district's rules barred religious services in its facilities.

Both a federal district court and the U.S. Court of Appeals for the 2nd Circuit, based in New York, ruled for the school district. The district court held that a public school is a limited public forum under the First Amendment and that the district was not required to make its facilities available to all groups.

In its appeal in *Full Gospel Tabernacle v. Community School District 27* (No. 98-1714), the ACLJ argued that under the district's policy, groups renting space in schools "may sing religious hymns for musical entertainment, but not for the worship of God. They may hold ceremonies to honor the mayor, but not the Maker. Such blatant anti-religious discrimination violates the U.S. Constitution."

Voting-Rights Case

In an action not seen at the Supreme Court since 1991, the justices ordered the case of *Reno v. Bossier Parish School Board* (No. 98-405) restored to its docket for reargument this fall.

The court was apparently unable to reach a decision in a case that was among

the last of the term to be argued. But it likely wasn't a lack of time that prevented a decision, but the subject matter.

The case involves a school district's compliance with the Voting Rights Act of 1965. The 19,000-student Bossier Parish district in northwest Louisiana has been battling for years to win federal approval of its 1992 redistricting plan.

The district is a covered jurisdiction under Section 5 of the voting-rights law, meaning it must win approval from the U.S. Department of Justice or the federal district court in Washington for any change in voting procedures, including redistricting plans.

As of 1992, the district had never elected a black school board member. The Justice Department sought to require the district to adopt a redistricting plan with two majority-black voting districts.

The federal district court in Washington has twice ruled that the school district had legitimate, nondiscriminatory reasons for adopting a plan with no majority-black districts.

In the most recent appeal, the Justice Department has asked the Supreme Court to decide whether voting districts that are drawn with a discriminatory purpose can be rejected even if they do not leave minority voters worse off than before.

The justices on June 24 ordered the case reargued and asked the parties to file new court papers addressing such issues as whether the Justice Department or the covered jurisdiction bears the burden of proof when a redistricting plan is enacted with a discriminatory but non-retrogressive purpose.

LEVEL 1 - 6 OF 318 STORIES

Copyright 1999 The New York Times Company
The New York Times

August 5, 1999, Thursday, Late Edition - Final

SECTION: Section B; Page 5; Column 4; Metropolitan Desk

LENGTH: 552 words

HEADLINE: Albany Tries Again to Aid Hasidic Village

BYLINE: By JOSEPH BERGER

BODY:

Despite court rejections of three earlier laws intended to accomplish the same goal, the New York Legislature passed provisions in its budget bills early yesterday morning intended to provide funds for a public school district for handicapped Hasidic children in the upstate village of Kiryas Joel. A spokesman for Gov. George E. Pataki said he would sign the new provision.

The fourth Kiryas Joel initiative was passed overwhelmingly after midnight as the Legislature rushed to complete work on the budget.

The legislation does not identify Kiryas Joel by name. Rather it gives any town, village or municipality of 10,000 to 125,000 inhabitants that is contained within a larger school district the right to petition for creation of a discrete school district and to receive state assistance.

Any new district would have to be approved in one of two ways, by voters or by governing boards in the breakaway municipality and in the larger school district.

Governor Pataki's office said the terms of the new provision were broad enough to potentially affect 29 municipalities -- not just Kiryas Joel but Elmira, New Rochelle, Lockport, Middletown, Kingston, Saratoga, Westbury and others. There has been no indication that those municipalities have sought to secede from larger school districts.

Federal and state courts have thrown out earlier state laws passed on behalf of Kiryas Joel -- in 1989, 1994 and 1997. The courts found them unconstitutional because they amounted to a favor for a single religious group. The first law named Kiryas Joel specifically while the other two would have applied only to Kiryas Joel or just one other municipality in the state.

Michael McKeon, a spokesman for the Governor, said Mr. Pataki considered the new provision to give "school districts a menu of options for reorganization -- to annex, merge, partition, centralize or consolidate."

At a news conference, Assembly Speaker Sheldon Silver was more willing to say

that the provision was tailored for Kiryas Joel, a village of 15,000 Hasidim in the Monroe-Woodbury school district in Orange County.

The village's nonhandicapped students have always attended private yeshivas, but through the mid-80's, its handicapped children attended special education classes in Monroe-Woodbury schools. After the village decided that those children, with their distinctive appearance, were subjected to ridicule, it formed its own public school district and has sought state special education funds.

"Severely handicapped children need to be served," Mr. Silver said. "The surrounding school district, Monroe-Woodbury, has indicated they support a separate district. They don't want the burden -- I emphasize the burden -- of providing for those children. And knowing the culture and the heritage of the parents, those children would be kept in the closet, not provided services, if this district was not provided."

Dissidents within Kiryas Joel, who want the handicapped children educated in religious settings rather than secular public schools, no matter what the cost, were unhappy with yesterday's legislative actions. "This is a political kickback for a leadership which delivered them a bloc vote," said Joseph Waldman, the spokesman for a dissident faction of the Satmar Hasidim in Kiryas Joel.

<http://www.nytimes.com>

LANGUAGE: ENGLISH

LOAD-DATE: August 5, 1999

' Kiryas Joel'

The Court was sharply divided (4-3) over its decision in *Grumet v. Pataki*, where, for the third time in six years, it found unconstitutional a legislative attempt to provide separate education for handicapped children in Kiryas Joel, a Satmar Hasidic village located in Orange County. Following this Kiryas Joel III decision, Assembly Speaker Sheldon Silver stated that the Legislature was unlikely to make another attempt to address the matter.

Ironically, the 1985 U.S. Supreme Court decisions that led to years of controversy and failed legislative efforts to create an acceptable solution have since been reversed. n3

n3 See <=1> *Agostini v. Felton*, 521 U.S. 203 (1997).

The children of Kiryas Joel are educated in parochial schools. Prior to 1985, the public school district provided special services to handicapped students in a building annexed to one of the parochial schools. The U.S. Supreme Court's decisions in *Aguilar v. Felton* and *Grand Rapids School District v. Ball*, however, interpreted the Establishment Clause to prohibit publicly funded teaching on the premises of religious schools. For a brief period handicapped Hasidic children received special services on public school premises, but the sect found that solution unacceptable and stopped sending its children for the services.

The Monroe-Woodbury Central School District then sought a declaration that it was required to provide special services only in public schools, but the Court of Appeals disagreed, instructing that the district should provide services at a site reasonably acceptable to the Kiryas Joel community. Thus began the legislative odyssey.

The State enacted a statute in 1989 establishing the village as a union free school district within the Monroe-Woodbury District. In *Kiryas Joel I*, n4 the Court of Appeals invalidated the arrangement, reasoning that because only Hasidic children would attend the new district's schools and only Satmar community members would sit on its school board, the Establishment Clause would be violated.

n4 <=2> *Grumet v. Board of Educ. of Kiryas Joel School Dist.*, 81 NY2d 518 (1993), *aff'd*, <=3> 512 U.S. 687(1994).

Within days of the U.S. Supreme Court's affirmation of the Court of Appeals' decision the Legislature responded with the 1994 law. That statute established facially neutral criteria for establishing union free school districts, but Kiryas Joel was the only community in the State to satisfy the criteria. Moreover, the statute was limited to pre-existing communities, foreclosing the possibility of others ever benefiting from its provisions.

In *Kiryas Joel II*, n5 the Court of Appeals again found the Establishment Clause contravened. Its unanimous opinion did note, however, that a statute applicable generally and that covered a "broad array" of municipalities "might"

be constitutional.

n5 <=4> Grumet v. Cuomo, 90 NY2d 57 (1997).

The Legislature's response three months later was the 1997 law revealingly titled "The Kiryas Joel School Bill." Its facially neutral criteria applied to two municipalities, one of which was Kiryas Joel. This statute did not contain the limitation to pre-existing communities criticized in Kiryas Joel II. Both the Supreme Court, Albany County, and the Third Department found the statute violated the Establishment Clause.

'Non-Neutral Effect'

Judge George Bundy Smith wrote the Court of Appeals' majority opinion affirming the finding of unconstitutionality. Chief Judge Judith Kaye, Judge Carmen Beauchamp Ciparik and Judge Albert M. Rosenblatt concurred. The Court held that although the law had facially neutral criteria, it had a "non-neutral effect." The criteria were so drawn that "other communities -- both religious and secular -- with similar educational needs will not have equal opportunity to create a publicly funded school district," and thus the Establishment Clause's neutrality principles were violated.

The law also "had the effect of advancing one religion over another," the majority found, because it delegated government power to a religious group. Finally, providing a religious community with a school system at taxpayer expense would constitute an "impermissible religious accommodation."

Judge Joseph W. Bellacosa (who also had dissented in Kiryas Joel I) wrote the strongly worded opinion for the three dissenters, joined by Judges Howard A. Levine and Richard C. Wesley. The dissent stated that changes in the "maturing" interpretation of the First Amendment called for a different test to be applied to the 1997 statute than had been applied by the majority. The opinion argued that if the neutral criteria's effects neither endorsed religion nor disfavored it, the fact the criteria principally benefited sectarian schools should not be dispositive.

Judge Bellacosa's opinion rejected in addition the majority's "impermissible accommodation" analysis on the basis that, as long as the statute allowed other groups to obtain its benefits, no showing that other religious (as opposed to secular) groups would benefit was required. Also criticized was the majority's "broad spectrum" analysis. The dissenters considered the statute, applicable to one religious and one secular group immediately and to "countless potential others" that might organize to take advantage of it in the future, to have cured the defects the Court had identified in Kiryas Joel II.

Finally, the dissent was dismayed at what it perceived as the majority's reliance on the history of the dispute and prior legislation, as opposed to analysis of the statute before it. As if anticipating Speaker Silver's exasperated abandonment of further attempts at a legislative solution, Judge Bellacosa wrote:

if this Court ever thought that the "history" of this matter would be a perpetual albatross carried through all later drafts and enactments, then it should not have opened the window of a possibly acceptable theory of constitutionality [i.e., the "broad array" dicta of *Kiryas Joel II*]. Naturally, the Legislature pointedly and respectfully responded; we believe it did so successfully and constitutionally.

Both opinions were in accord on one point, imploring those involved to "make every effort" to reach an accord and avoid further litigation.

Andy
Eric + return

Andy - can we help?

BR

10-18-99

✓
 ct
 Reed
 Podesta
 copied
 Reed
 Podesta

DRAFT

October 27, 1999

MEMORANDUM FOR THE PRESIDENT

From: Bruce Reed
Andrew Rotherham

Subject: Kiryas Joel Village Education Situation

This memo is in response to your inquiry as to whether we could assist in the attempt of the Kiryas Joel village to establish a school district. The issues involved in this case are church-state issues rather than Individuals With Disabilities in Education Act (IDEA) issues. It would be difficult for us to assist the village.

Kiryas Joel village is in Orange County in upstate New York and part of the Monroe-Woodbury school district. The village is home to approximately 15,000 Satmar Hasidic Jews who follow a strict interpretation of the Torah. Kiryas Joel is the largest concentration of Hasidic Jews in New York outside of the city. There are about 5000 school-aged children in Kiryas Joel and almost all attend private religious schools. Because of the strict tenets of their religion, residents of Kiryas Joel do not want their children attending regular public schools. For example, Hasidic Jews restrict interaction between the sexes including between women and boys so much teacher-student interaction in the public schools is problematic. In addition, villagers are concerned that the distinct dress and customs of the Hasidic students could lead to ridicule.

MAI
Reed

Am 35

Approximately 200 students, all with special needs, attend a public school in the village created to serve them. Because of the high costs of special education, villagers have long sought the establishment of a separate school district in Kiryas Joel. Although property taxes in Kiryas Joel would partly fund this school, New York's special education formula allows for a relatively high state share of special education expenses.

1 Prior to 1985 special needs students from Kiryas Joel attended special education classes provided by the Monroe-Woodbury school district in a building annexed to a parochial school. The 1985 *Aguilar v. Felton* Supreme Court ruling (since overturned by the 1997 *Agostini v. Felton* ruling) ended this practice and in 1989 after the state appeals court ruled that Monroe-Woodbury was not required to provide special education services for the village's children at a neutral site, the state legislature got involved.

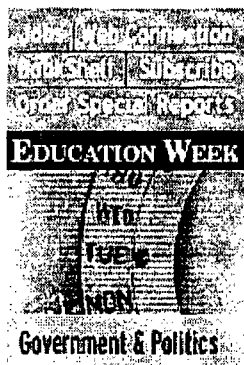
In 1989 the New York legislature passed a law to allow Kiryas Joel to operate a special school district coterminous with the villages boundaries to serve the special needs students. The New York State School Boards Association challenged this district as unconstitutional and in 1982 the U.S. Supreme Court agreed in a 6-3 ruling.

Four days after that ruling the legislature enacted a second statute for Kiryas Joel using neutral language that would allow any municipality to establish a separate school district if it met specific population and tax base criteria. Kiryas Joel was the only municipality that met the new criteria and the law specifically barred any municipalities created in the future from forming its own school district. This statute was unanimously struck down in 1997 by the New York Court of Appeals although the court said that the legislature could validly enact a, "truly religion neutral law of general applicability" by creating a law under which Kiryas Joel would only be, "one in a broad array of eligible municipalities."

Later in 1997 the legislature enacted a new law which it felt met this criteria. This past May the New York Court of Appeals struck down that law because it potentially only benefits 2 municipalities. The U.S. Supreme Court voted 6-3 not to review this case.

Before the latest U.S. Supreme Court ruling, the New York legislature passed a fourth law, contingent on a Supreme Court denial that expands the criteria for the creation of a special district to apply to as many as 29 municipalities. The village board has already voted to create school district under the latest law.

There is widespread bipartisan support in New York for allowing Kiryas Joel to establish a school district. Governor Pataki and Assembly Speaker Sheldon Silver are both strong supporters. In fact, while he was in the legislature, Pataki sponsored one of the early Kiryas Joel laws. Politically, the villagers are a powerful force. Groups that generally would be allied with the New York New York State School Boards Association on a church state case of this nature have not gotten involved in this case.



Click here.

IN CONTEXT SEARCH TEACHER MAGAZINE THE DAILY NEWS SPECIAL REPORTS PRODUCTS & SERVICES

October 20, 1999

High Court Declines To Review Choice, Kiryas Joel Cases

By Mark Walsh

Washington

For the third time in a year, the U.S. Supreme Court has declined to review a school choice program involving the participation of religious school students.

The high court refused without comment last week to review two separate appeals stemming from Maine's refusal to allow religious schools to participate in a voucher-like system for towns without their own high schools.

Meanwhile, the court dealt a blow to **KIRYAS JOEL**, N.Y., by refusing to hear an appeal of a state supreme court ruling that struck down a 1997 law authorizing a separate school district for the community of Hasidic Jews.

Under Maine's "tuitioning" program, about half the state's 284 districts pay tuition for their high school students to attend nonreligious private schools or public schools in nearby districts.

The state used to pay the tuition of a small number of students in religious schools. But in 1981, Maine passed a law limiting the tuition payments to "nonsectarian" schools.

In recent years, backed by organizations that have sought to promote religious school vouchers in legal cases, families in two Maine communities that send their children to Roman Catholic high schools have sought reimbursement under the state tuitioning program.

Five families from the town of Raymond who send their children to a Catholic high school in Portland, Maine, sued in state courts, claiming that the exclusion of religious schools from the program violated their First Amendment right to freely exercise their religion. That exclusion, they contended, was not compelled by the amendment's prohibition against a government establishment of religion.

Three Catholic school families in Minot raised similar claims in a federal lawsuit.

'Muddled' Case

Last spring, Maine's highest court ruled 5-1 in the Raymond case

Related stories:

["Complaint Lodged Against Private Voucher Schools in Milwaukee," Sept. 8, 1999.](#)

["Federal Judge Suspends Cleveland Voucher Program," Aug. 26, 1999.](#)

For background, previous stories, and related Web links, please see our [Issues Page on Choice and Vouchers.](#)

["Judge Overturns Expanded Wis. Voucher Plan," Jan. 27, 1997.](#)

that the First Amendment's establishment clause required the state to bar religious schools from the tuitioning program.

In the Minot case, a panel of the U.S. Court of Appeals for the 1st Circuit, based in Boston, issued a similar ruling, stating that "the Supreme Court has never permitted broad sponsorship of religious schools."

The high court declined last term to review a decision of the Wisconsin Supreme Court that upheld the participation of religious schools in the Milwaukee voucher program. And earlier this month, the justices refused to hear a school-choice-related appeal stemming from Arizona's program of giving tax credits for contributions to private tuition organizations.

Lawyers for the major teachers' unions and other groups opposing vouchers told the justices that the Maine cases would not make a good vehicle for considering the constitutionality of religious school vouchers. Because the state prohibits the participation of religious schools, the two Maine cases present the voucher issue in a "muddled, hypothetical posture," the opponents' brief said.

The court's refusal to hear the two Maine appeals, *Bagley v. Raymond School Department* (Case No. 99-163) and *Strout v. Albanese* (No. 99-254), means it could be some time before it is presented with another school voucher case.

KIRYAS JOEL

Separately last week, the court voted 6-3 not to hear an appeal involving a New York state law that created a separate school district for **KIRYAS JOEL**.

The village of 5,000 educates most of its children in private schools, but it maintains a public school district to serve 225 students with disabilities. Village leaders say parents are reluctant to send their children to public schools in a nearby district out of concern that they would be ridiculed for their distinctive dress and customs.

In 1994, the U.S. Supreme Court ruled that a state law establishing a school district solely for a village made up almost entirely of Hasidic Jews was a form of "religious favoritism" that violated the U.S. Constitution.

Since that ruling, the New York legislature has struggled to craft a neutral law that would allow **KIRYAS JOEL** and a small number of other communities to create their own districts. The New York Court of Appeals, the state's highest court, ruled in May that a 1997 law failed to pass muster because it potentially benefits only two communities.

This past summer, the legislature tried again by passing a measure that was contingent on the Supreme Court's refusal to review the 1997 law. The latest law, which expands the criteria for the creation of separate village school districts, could apply to as many as 29 municipalities in the state, its backers say.

Steven M. Benardo, the superintendent of the **KIRYAS JOEL** district, said the village board had already voted last week to seek to create a school district under the latest law.

In the appeal in *Pataki v. Grumet* (No. 98-1932), Justices Sandra Day O'Connor, Antonin Scalia, and Clarence Thomas said they would have granted review.

on the Web

Check out the Supreme Court cases [On the Docket](#) from the 1999-2000 term courtesy of Northwestern University.

[about this site](#) | [subscribe](#) | [order special reports](#) | [jobs](#) | [web connection](#) | [bookshelf](#) | [feedback](#) | [advertising](#)

© 1999 Editorial Projects in Education

Vol. 19, number 8, page 23

MEMORANDUM

To: Andy Rotherham
From: JB Buxton
Re: **Kiryas Joel**
Date: October 22, 1999

The Kiryas Joel Village and School District

Kiryas Joel is a village in upstate New York (about 50 miles from New York City) populated by about 5,000 Satmar Hasidic Jews. Satmar Hasidic Jews follow a strict interpretation of the Torah. All non-handicapped children from the village attend private yeshivas. Since 1989, students with disabilities have attended school in the special school district within the village. There are presently 225 students in this special district. The Kiryas Joel district has enjoyed bipartisan support with Assembly Speaker Sheldon Silver and Governor George Pataki among its strongest supporters.

Background

Through the 1980s, students with disabilities from Kiryas Joel attended special education classes in the Monroe-Woodbury schools district in a building annexed to a parochial school. However, in 1985, the US Supreme Court, in *Agostini v. Felton* ruled that the Establishment Clause of the First Amendment prohibited publicly funded teaching on the grounds of religious schools. This led Monroe-Woodbury to request that it only be asked to provide special education services in public schools, but the New York Court of Appeals ruled that it should provide services at a site reasonably acceptable to Kiryas Joel.

1989-1994. Under the leadership of then-Governor Cuomo, the state legislature passed the first of three laws designed to allow Kiryas Joel to operate a special school district. The 1989 law established the village as a union free district. In 1993, the New York Court of Appeals struck down the statute as a violation of the Establishment Clause of the First Amendment in a suit filed by the School Boards Association. The US Supreme Court affirmed this decision.

1994-1997. After the US Supreme Court failed to uphold the appeal, the legislature passed the second of the “Kiryas Joel” laws. This measure established criteria for becoming a union free district—criteria by which Kiryas Joel was the only one of eligible out of 1,545 municipalities. The Court of Appeals again struck down the law on the grounds of a violation of the Establishment Clause. The legislature responded in 1997 with its third law. This law rewrote the criteria—now applying to 2 municipalities.

1999. The Court of Appeals issued a 4-3 ruling, again striking down the legislature’s statute. The decision noted that the statute’s criteria were drawn that “other communities—both religious and secular—with similar educational needs will not have equal opportunity to create a publicly-funded school district,” violating the neutrality principles of the Establishment Clause, and that the law “had the effect of advancing one religion over another.” The decision was appealed to the US Supreme Court, where after a temporary stay of injunction was ordered; the Court refused to hear the case. The Court handed down that decision to refuse to hear the appeal earlier this month.

Current Legislation

Anticipating this outcome, the New York Legislature had passed a bill in the summer, contingent upon the US Supreme Court's refusal to hear the case or find in favor of the State, that authorizes more facially neutral criteria for becoming a union free district—criteria that now make 29 districts eligible for such designation. The law gives any town, village or municipality of 10,000 to 125,000 inhabitants that is contained within a larger school district the right to petition for creation of a discrete school district and to receive state assistance. New districts would have to be approved by either voters or by governing boards in the breakaway municipality and the larger school district.

Where to from Here?

The effort has enjoyed and has significant support in the State Assembly on both sides of the aisle, in the Speaker's seat, and in the Governor's Mansion. There is a sense that the legislature is getting closer to a law that does what it needs to make the Kiryas Joel village population of special needs students its own district. However, what continues to restrain them from operating the school is their inability to show the state or US high court that setting up such a district does not violate the establishment Clause of the First Amendment to the US Constitution. Some experts have said that the law as currently written can pass constitutional muster. The danger with the current legislation is that it could establish for parents, the window to secede from the district—creating districts drawn along racial and class lines.

Tom Rous

Notes -

Print part of HBIAC Jans - note

of registration

at B-15 on...

But for
of regional
wonder how that Bus
compartment in
Mumbai - Woodbury S.D.
we are still

Sum 512 Papers

Some six Pages
b. Please indicate the first five
of the Nov. 1950

or

① No one wants to say no to this card

② Not Paul's

Become SOME FURIA FILM

S.D.

no

no

one cross
not Paul for
Hans Peroni STATE PUBLIC Finance
169/152
S.D.
Mun
Mun
S.D.

A Film

S.D

Mannat no Stadium
Stadium mai Dhan

60

do 45

LEVEL 1 - 18 OF 318 STORIES

Copyright 1999 New York Law Publishing Company
New York Law Journal

May 12, 1999, Wednesday

SECTION: Pg. 1

LENGTH: 1322 words

HEADLINE: School District Law Struck, 4-3;
Third Effort at Solution for Kiryas Joel Declared Unconstitutional

BYLINE: BY GARY SPENCER

DATELINE: ALBANY

BODY:

A deeply divided Court of Appeals yesterday struck down the state's third attempt to provide a special school district for the Hasidic village of Kiryas Joel, finding that the statute "violates Establishment Clause principles by preferring one religion over others."

Although the law is couched in facially neutral language, the Court found that only two of the state's 1,546 municipalities meet its restrictive criteria for forming their own school districts: Kiryas Joel and Stony Point.

"A statute so narrowly drawn that it delegates a significant governmental power almost exclusively to a single religious group, and provides no assurance that the statute's benefits will be equally available to others, is unconstitutional," Judge George Bundy Smith wrote for the 4-3 majority in *Grumet v. Pataki*, No. 38.

The three dissenting judges -- Joseph W. Bellacosa, Howard A. Levine and Richard C. Wesley -- had all joined two years ago in the unanimous opinion that struck down the prior statute, which applied only to Kiryas Joel. In an opinion by Judge Bellacosa, they argued the latest version corrects the constitutional defects and "expands the reach of the statutory authorization to at least one actual, additional secular entity, and countless potential others"

The dissenters complained the majority's focus on the narrowness of the class that could benefit from the law "devalues the constitutional burden into a mere counting exercise."

But Judge Smith, joined by Chief Judge Judith S. Kaye and Judges Carmen Beauchamp Ciparick and Albert M. Rosenblatt, said the current law's "qualifying criteria are consciously drawn to benefit Kiryas Joel" and its effect is "virtually identical" to the statutes the Court struck down in 1993 and 1997.

"Thus," Judge Smith wrote, "the non-neutral effect of the statute is to

secure for one religious community a unique and significant benefit -- a 'public school' where all the students adhere to the tenets of a particular religion -- unavailable to other, similarly situated communities."

Compromise Suggested

The majority urged all parties to work out an agreement to avoid a fourth collision with the Establishment Clause, perhaps by having the Monroe-Woodbury Central School District, which surrounds Kiryas Joel, provide services for handicapped Hasidic children outside of its public schools.

Monroe-Woodbury had operated a special education annex at the Hasidic school for girls in Kiryas Joel until 1985, when the U.S. Supreme Court ruled in *Aguilar v. Felton*, 473 US 402, that paying public employees to teach in parochial schools was unconstitutional. It was Aguilar that triggered legislative action to create a Kiryas Joel school district and the resulting decade of litigation. The Supreme Court has since overruled Aguilar in *Agostino v. Felton*, 521 US 203.

"It is now possible, compatibly with the Federal Constitution, to do what the parties wanted to do before Aguilar stopped them," Judge Smith wrote. "Given this new opportunity, we strongly suggest that the parties make every effort to reach an accord that will benefit the children and themselves. This is far preferable to the costly and inevitable prospect of further legal strife."

There was little comment yesterday from state officials, who were still reviewing the decision and their options. A spokeswoman for Assembly Speaker Sheldon Silver said, "The speaker remains committed to finding a mechanism that addresses the educational needs of this special group of handicapped youngsters."

The Court based its ruling entirely on federal constitutional law, which leaves the door open for state and village officials to appeal to the U.S. Supreme Court. An appeal would permit the Kiryas Joel Village School District to continue operating under a stay, as it has through a series of court defeats since 1989. But the Attorney General's Office said no decision had been made regarding an appeal.

A Decade of Debate

Kiryas Joel has been at the center of debate over the separation of church and state since 1989, when the Court of Appeals ruled Monroe-Woodbury could not be compelled to provide special education for the Orange County village's handicapped children at a neutral site. The Satmar sect in Kiryas Joel provides Hasidic schools for most of its children, but it insisted publicly funded services should be provided for its handicapped students outside of the public schools.

The State Legislature responded with a special statute carving a new school district for Kiryas Joel out of the Monroe-Woodbury district. The statute simply made the new district boundaries coterminous with the village's

boundaries and enabled the Satmar sect to obtain state aid for special education.

The New York State School Boards Association challenged the law, and in 1993 the Court of Appeals struck it down in a 4-2 ruling in [Grumet v. Board of Education](#), 81 NY2d 518 (Kiryas Joel I). The U.S. Supreme Court affirmed in a 6-3 decision.

Four days after the Supreme Court ruling, the Legislature enacted another statute for Kiryas Joel, using neutral language that would permit any municipality to create its own school district if it met specific population and tax base criteria. But Kiryas Joel was the only municipality that met them all, and the statute barred any municipality created in the future from forming its own district.

Limits Remain

The Court of Appeals unanimously struck down that statute in 1997 in [Grumet v. Cuomo](#), 90 NY2d 57 (Kiryas Joel II), although it said the Legislature could validly enact "a truly religion-neutral law of general applicability" in which Kiryas Joel would be "one in a broad array of eligible municipalities."

The Legislature enacted the current law the same year, claiming it had cured all constitutional defects by removing the most restrictive criteria.

But Judge Smith said the latest version "fails to eradicate the earlier statute's overriding flaw" because the eligibility requirements "are still limited in such a way that permits the statute's benefits to flow almost exclusively to the religious sect it was plainly designed to aid."

The majority said this limitation violates the Establishment Clause by advancing religion, violating the second prong of the test the Supreme Court adopted in [Lemon v. Kurtzman](#), 403 US 602.

Reading the Legislature

It also cited the legislative history of the statute, which "was enacted in direct response to Kiryas Joel II and with the intent to accomplish what previous legislative efforts had failed to accomplish: provide the residents of Kiryas Joel with an exclusively Satmar 'public school' environment, at taxpayer expense, in which to educate their children."

The dissenters said the majority's reference to legislative history "implies that, because the Legislature has previously made mistakes, it cannot successfully cure its flaws." Instead, Judge Bellacosa argued, the Legislature's persistence provides support for the statute's validity.

"This law, after all, is the result of a concept that has thrice received the deliberative action of both houses of the State Legislature, two Governors of opposing political parties and has been shaped by decisions of the highest

courts of this state and of the United States," he wrote.

The dissenters also argued that the Supreme Court has loosened restrictions on government aid to parochial schools in *Agostini*, which "provides a potent lesson that it is not un-American or unconstitutional to refuse to be absorbed into the melting pot."

The School Boards Association was represented by its counsel, Jay Worona; the state by Assistant Attorney General Peter H. Schiff; the Kiryas Joel school board by Washington D.C. attorney Nathan Lewin, of Miller Cassidy Larroca & Lewin; and Monroe-Woodbury by Lawrence W. Reich, of Ingerman Smith in Northport.

GRAPHIC: Map, DENIED: The Court of Appeals struck down the third attempt to provide a special school district for Kiryas Joel.