CONTINUED...

High court

Continued from page 1

school teachers were receiving improper instructions from non-public school administrators, said Marc Stern, an attorney with the American Jewish Congress in New York City. Stern noted that his organization filed a friend-of-the-court brief on behalf of the group that brought the *Felton* lawsuit.

"We had individual teachers calling us after the case who said that some parochial schools would tell teachers how to dress ... and not to teach evolution," he said in a phone interview with the *Catholic Courier.*

He added that some teachers told the AJC that religious schools – Catholic, Protestant and Jewish – would try to control the types of reading materials public school instructors used with their non-public students.

But the vast majority of public and non-public school leaders – including those here in the diocese – would dispute the contention that religious schools tried to control the public schoolteachers who taught in them.

Sister Eileen Daly, SSJ, principal of Corpus Christi School at Blessed Sacrament, dismissed the notion that the Catholic schools somehow posed a threat to the souls of the public schoolteachers who once taught there.

"Eighty percent of my kids are non-Catholic," she said. "So what am I converting (the teachers) to?"

Apparently, the Supreme Court has found some logic in the contentions of educators like Sister Daly. That's evidenced by the fact that the court is reexamining *Felton* a mere 12 years after the decision was wrought. It's an unusual move, legal experts say, because the decision is relatively new. Other decisions the Supreme Court made, and then overturned, date back several decades.

Even more unusual, say legal experts, is the fact that the court is taking a second look at the decision because of arguments presented by the case's *loser* – in this instance, New York City's public school district.

The court is slated to hear arguments against *Felton* from the New York City School District in April, according to one of

"We can better serve the non-public school students on-site."

– Betty Rea

the district's attorneys, Stephen J. McGrath. In a phone interview with the *Courier,* McGrath pointed out that a 1994 Supreme Court case paved the way for the reopening of *Felton.*

In the "Kiryas Joel" case, the Supreme Court said that New York state could not create a separate school district to serve Hasidic Jewish students with handicaps. The state legislature had created the district in order to fulfill federal mandates that called districts to educate non-public students – like the Hasidic Jewish children attending religious schools – who also had disabilities.

However, several of the justices acknowledged that the *Felton* decision had helped to create the case in the first place by barring public schoolteachers from religious schools. Justice Antonin Scalia went so far as to say *Felton* was "so hostile" to religion that it should be "overruled at the earliest opportunity."

New York City's allies against *Felton* include the city's Catholic schools, the public schoolteachers' union, and even the U.S. Department of Education, which filed a friend-of-the-court brief against *Felton* last fall, McGrath said.

So hated is *Felton* among educational leaders that it has brought together an unusual alliance of religious and public education heavyweights – the same people who often disagree on such issues as tax-funded vouchers for non-public school tuition.

But observers noted that the shared antipathy to *Felton* comes down to its detrimental effects on students and teachers, and to the money – *lots* of money – that the decision has cost government at all levels.

Prior to *Felton,* public school districts complied with federal mandates that called them to provide instructional services to non-public students by sending their teachers into non-public schools. *Felton* ended that practice, forcing public school districts to provide mandated services at off-site or so-called "neutral" settings like public schools and "mobile instructional units" housed in trailers that stood near the non-public school buildings.

Last year alone, the New York City School District spent $6 million on non-instructional costs to implement federally mandated educational services to non-public school students, McGrath said. Meanwhile, the Department of Education shelled out $40 million last year for the non-instructional costs of its Title I program, according to Mary Jean LeTendre, the federal program's director.

"That's money that's not going to public or private school students," LeTendre said in a phone interview with the *Courier.*

Title I was created by the U.S. Congress in 1965, and funds instruction for low-income and/or educationally disadvantaged students from both public and non-public schools. More than any other educational program, Title I has felt the effect of the *Felton* decision, several observers noted, and compliance with the ruling has created numerous problems for school districts.

In Rochester, six Catholic schools – Corpus Christi at Blessed Sacrament, Holy Family, Holy Rosary, St. Andrew, St. Boniface and St. Monica – together have about 500 students who received Title I services. More than 300 of those students attended classes in mobile instructional units, said Betty Rea, administrative specialist for the non-public instructional program of Title I in the Rochester City School District.

But last fall, the six schools declined the mobile units that once stood on their properties, and which housed students being taught by public schoolteachers at various times and days throughout the week.

"The whole idea of children leaving the school made it very difficult for teachers to keep on top of what was going on," said Sister Patricia Carroll, SSJ, assistant superintendent for government services and administration for the diocese's Department of Catholic Schools.

In fall of the 1997-98 school year, the six Catholic schools plan to use a computer-aided instructional program funded by Title I, Sister Carroll and Rea said. Rea added that Catholic schoolteachers will attend a daylong training session this spring to learn how to track their students who will work with the program mostly on their own.

But she contended it would be better if she could send her trained instructors directly into the schools to work with the children on the computers, she said.

"One-to-one with a teacher, to me, is more valuable than sitting at a computer," Rea said.

Sister Daly said Corpus Christi will eventually have to pay for an instructor to work with her Title I children on the computer-aided instruction program. She noted that she was fed up with the *Felton* decision and what it has cost.

"It's a mean-spirited law," she said. "It didn't help anybody."

James D. Mahoney, associate superintendent of schools for the Archdiocese of New York City, said in a phone interview that *Felton* was a decision for which he has found little, if any support.

"I do not know of a single public school superintendent who was happy with that decision," he said. "They're not in the business of making vans," he added, referring to the mobile instructional units used by many districts.

Rea stated similar sentiments.

"I really feel it needs to be reversed," Rea said. "We can better serve the non-public school students on-site."

Even the American Jewish Congress – which plans to file another friend-of-the-court brief on behalf of *Felton* – acknowledges that the decision may have gone too far, Stern said. He pointed out that if *Felton* is overturned, his organization would be content with such a decision as long as the Supreme Court included some safeguards preserving church/state separation and barring direct financial aid to religious schools.

Mary Beth Fuehrer, principal of Holy Rosary School, said she has worked at the school for 29 years, and she fondly recalled when public school speech teachers taught in the building.

"What a rigamarole!" she complained of *Felton.* "A child is a child. I feel that our parents are taxpayers, too, and should be getting what's coming to them."