



# The Montessori OBSERVER

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## IMS Files Law Suit in United States District Court

On Sept. 28, 1981, IMS filed suit in United States Federal District Court in Baltimore, MD to injoin the Maryland State Board for Higher Education, the Maryland State Board of Education and twelve state officials from enforcing certain state laws against certain private schools in Maryland. IMS asserts in the suit that the defendants, in effect, have employed certain state laws to prohibit and otherwise restrict the operation of certain private schools in the state.

Notably, the complaint alleges violation of the constitutional rights of IMS arising from the action of the Maryland State Board for Higher Education which on July 2, 1981 voted to deny issuance of a certificate of approval to IMS to enable operation of its Montessori teacher training program in Maryland. Since such certificate of approval is required under Maryland law, IMS is, in effect, prohibited from operating its teacher training program by such action.

The Maryland State Board for Higher Education denial action was premised on an unfavorable curriculum evaluation conducted by the State Board staff. In essence, the staff refused to approve the IMS program because the curriculum failed to meet the "present prevailing standards of quality for a Teacher Training Program".

However, IMS claims that the laws under which the Maryland State Board for Higher Education asserts its power to regulate private postsecondary educational institutions, such as the IMS training program, are unconstitutional, in violation of the First and Fourteenth Amendments. The complaint alleges that the pertinent laws are vague, indefinite and overbroad since no pertinent "educational qualifications and standards" are defined or identified in such laws. IMS further asserts in the complaint that the distinctively creative approach of the IMS curriculum cannot be effectively or fairly measured by traditional teacher training standards since traditional training programs are generally oriented towards "conveying subject matter" rather than "communicating a commitment".

The constitutionality of the Maryland education laws affecting private Montessori schools in Maryland is also challenged. The complaint asserts that the State Board of Education, in requiring certain training requirements for Montessori teachers in the state, is an unconstitutional imposition on the IMS teacher training program which, in effect, restricts and inhibits certain individuals from enrolling and participating in the IMS course.

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## FTC Threatens Private Education

The **Federal Trade Commission (FTC)** recently proposed new regulations which threaten to impose severe restrictions on private postsecondary education. Since these regulations are aimed at private vocational education courses, Montessori teacher training programs would normally be included within such requirements.

The regulations, 16 CFR Part 438, published in *Federal Register*, Vol. 46, No. 132, July 10, 1981, would impose a broad range of interference on private education, including a 14-day enrollment cancellation period, restrictive tuition refund procedures and numerous

*Cont'd. page 4, col. 2*

## IMS Measures Progress

IMS recently completed its annual status report for the one-year period ending Aug. 31, 1981. Notably, IMS membership has expanded significantly during this period with the following active membership status reported as of Aug. 31, 1981:

- 399 - Individual members
- 60 - IMS Associate School members
- 67 - IMS Montessori School members

IMS records individual members located in eight (8) countries: United States, Canada, Mexico, Holland, Australia, New Zealand, Philippines and Republic of China. All school members are located in the United States, Canada and Australia.

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## Fall, 1981 Membership Directory Due November

The new **IMS Fall, 1981 Membership Directory** is due for publication in Nov., 1981. All members in good standing as of Nov. 1, 1981 will be included.

The directory will contain three separate sections denoting the three membership categories: individual, IMS Associate School and IMS Montessori School. The purpose of this publication is to enhance communication and participation throughout the Montessori community and to enable IMS to provide such information to the general public and other interested parties.

Copies of the new directory are provided to IMS Montessori school members at no cost with membership. Others may obtain a copy for \$5.00 each.

## Child Care Bill Passed in Illinois

**Nancy Silvers**, Assistant to the Governor of Illinois for Human Services, recently informed IMS that the final version of the amendments to the "Child Care Act of 1969" has now been passed into law. The potential threat of such legislation as affecting Montessori education in the state was discussed in the April/1981 issue of the *Observer*.

Ms. Silvers reported that Montessori schools now "will be able to apply for registration and recognition by the Illinois State Board of Education. If a Montessori school (including those serving children between the ages of two years to six years of age) completes the application process for registration and recognition, and is subsequently recognized, it is not necessary for these facilities to be licensed by the Illinois Department of Children and Family Services".

Registration and recognition procedures with the State Board of Education include certain curriculum requirements and an on-site evaluation to determine compliance with such requirements. The on-site evaluation is normally conducted by a team composed of a representative from the Illinois Office of Education, the Office of the Regional Superintendent of Schools, a public school and a non-public school.

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# Legal Issues

Schools committed to the effective application of Montessori principles inherently confront government regulations which tend to stifle and burden the operation of such Montessori schools. Such inappropriate government regulation challenges private Montessori schools to seek recourse beyond the boundaries of the repressive and rigid judgments and considerations normally associated with government day care and private education regulatory agencies.

## Liberty

Since a country's laws may protect "liberty" as a higher value than rigid conformance with prevailing traditional educational standards enforced by government regulatory agencies, private Montessori schools may be able to effectively address such government interference by recourse to the law. Thus, *legal issues* are a vital concern of Montessori education and must be engaged to enable the fully effective operation of Montessori schools.

## Common Law

Montessori education has most significantly developed in countries which protect the liberty of private parties through a legal system independent of the country's prevailing political structure and operation. The United States and other countries which have evolved from and follow the British system of "common law" generally provide legal interpretation consistent with historical precedence and the principle of reasonableness. Accordingly, legal systems in such "common law" countries have considerable flexibility and independence in the engagement of issues brought before the court.

## Human Rights

In "common law" countries, a substantial body of historical precedence has evolved from the *Magna Carta* which assures a significant respect for human rights beyond the authority or control of government. The principles of the *Magna Carta* have developed throughout recent history and are often incorporated into specific written documents; a "Constitution", the supreme authority of a country.

## Constitution

Legal systems and governments are normally constrained under the authority of a country's "Constitution". The United States Constitution, written and adopted in the late 1700's stands as a foremost exemplar of such documents. This notable document provides for

three co-equal branches of the federal government: Executive, Legislative and Judiciary. The Judicial branch, consisting ultimately of a Supreme Court, has a primary purpose to interpret the Constitution and laws enacted thereto.

## Police Power

In the United States, the rights of freedom in private education are subject to the *police power* of the government. Under such *police power*, the law generally allows the government to regulate private schools if there is a manifest present need affecting the public welfare and the regulations are not arbitrary, unreasonable, discriminatory or otherwise oppressive. Resolution of the respective rights of the government and private schools often revolve around the extent to which the government may exercise such *police power* to deny complete freedom of operation in private education.

## The First Amendment

The First Amendment to the United States Constitution establishes important criteria upon which the government's *police power* is limited in private education. Notably, the First Amendment protects basic freedoms of expression and communication from abridgement by the federal government. Following the United States Civil War in the 1860's, the Fourteenth Amendment was passed which, in effect, extends application of the First Amendment to state and local governments.

## A Fundamental Right

Recent Supreme Court cases in the United States have established that a stricter legal standard must be applied where states attempt to impose their *police power* to abridge certain "fundamental" rights. Notably, freedom of expression and communication under the First Amendment are generally considered "fundamental".

## Griswold v. Connecticut

In *Griswold v. Connecticut*, 381 U.S. 479 (1964), the Supreme Court specifically noted rights of private education within the protection of the First Amendment.

"...the state may not consistent with the spirit of the First Amendment, contract the spectrum of available knowledge..."  
**381 U.S. at 482**

Thus, the state bears a heavy burden to justify any imposition of regulations on private education.

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### Benefits include:

- 8 issues of the *Montessori Observer*
- Montessori publications at discount
- IMS program information
- Listing in Fall, 1981 Directory
- Membership card

### \* BONUS

- Free "Montessori" bumper sticker

Complete and submit the  
Reader Response Form

*\* Bonus offer guaranteed only while supplies last.*

Look for the  
November Observer  
featuring  
*Individual Liberty*

## The Montessori Observer

published by  
INTERNATIONAL MONTESSORI SOCIETY

912 Thayer Ave.  
Silver Spring, MD 20910  
(301) 589-1127

Lee Havis, Executive Director

*The Montessori Observer* is mailed eight times each year to Montessori schools in North America and IMS members throughout the world. The *Observer* is sent during the following months: Jan., Feb., March, April, May, Sept., Oct., and Nov. The purpose of this publication is to provide news and information about the development of Montessori education to extend awareness of Montessori principles and promote harmony within the Montessori community.

### INTERNATIONAL MONTESSORI SOCIETY

The International Montessori Society is sponsored by Educational Services, Inc., a non-profit corporation organized in Maryland, U.S.A. The purpose of IMS is to support the effective application of Montessori principles throughout the world.

### IMS ADVISORY BOARD

Elizabeth Hainstock, Educator, Author  
Romalda Spalding, Reading Specialist  
Dr. Arthur Janov, Psychologist  
Dr. R. Orin Cornett, Research Professor

### SUBSCRIPTION

*The Montessori Observer* is provided at no cost to Montessori schools in North America. Subscription to this publication may be obtained by requesting IMS membership which is open to all individuals for a \$15 yearly fee. Complete the membership application form to obtain an individual subscription and other benefits of IMS membership.

### ADVERTISING

Advertising space is available for services and products relating to Montessori education. Marketplace ads are \$7/line. Position and Placement ads are \$10 each and will be set and edited by us to conform to space requirements. Write for our advertising outline for rates and other information about design advertising.

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# Legal Briefs

## Montessori vs. Traditional

Government agencies which impose inappropriate regulations on Montessori education often premise such stifling imposition on the grounds that Montessori education is essentially a "philosophy" encompassed within any conventional approach to child development or general education.

However, legal precedent does exist for the notion that Montessori education is fundamentally distinct from traditional education. Court holdings of distinctiveness of Montessori education can be effectively employed to challenge repressive government interference and inappropriate regulation in the operation of Montessori schools.

In *Ratnayake v. Mack*, 499 F 2d 1207 (1974), the Eighth Circuit United States Federal Court of Appeals held that a requirement for Montessori teacher certification was not so unreasonable as to allow the Secretary of Labor to disregard such requirement in determining whether to grant labor certification for alien Montessori teachers. The Court found a fundamental distinction between Montessori teacher training and education as compared with traditional education:

*"In comparing the Montessori method with the more traditional method of education, there are obvious dissimilarities. Since each takes a different approach to education, the training and skills of a teacher for one is not necessarily compatible with those needed and utilized in the other..."*

499 F 2d at 1211

Since legal proceedings, such as exception or waiver from burdensome day care regulations, often require a justification for separate treatment of Montessori schools, *Ratnayake* can be useful in preparing an effective rationale for such waiver or exception for the pertinent government agency.

**NOTE: IMS has prepared a legal memorandum regarding rights of private schools and will provide such document to IMS members free on request.**

## New IMS Directory

\$5.00 ea.

- Lists all IMS members
- Montessori School Information
- Due Nov., 1981

Free with  
IMS Montessori School Membership

## Legal Issues

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### Compelling State Interest

The measure of proof to abridge rights in the operation of private education is generally that of a 'compelling state interest'. In effect, the government must show some special emergency or exceptional need, above and beyond a general public interest, to justify such infringement of fundamental rights in private education.

### Engaging Specific Issues

Since regulatory and legal schemes vary in each county and jurisdiction, legal confrontation and strategy need individual treatment and careful planning to assure satisfactory results. Normally, it is advisable for schools to seek an exemption or exception from regulations through existing government administrative agencies and their pertinent appeal or exception procedures.

In seeking such exception, Montessori schools need to properly distinguish and clearly assert the unique educational requirements of Montessori principles adversely affected by application of the particularly burdensome regulation(s). Once a formal, written, official and final denial of exception is made, legal confrontation in the courts may be appropriate.

### Practical Considerations

IMS supports appropriate legal confrontation to address inappropriate regulations which adversely affect Montessori education. Since IMS is generally familiar with state regulatory schemes in the United States, specific comments and assistance by IMS may be useful in individual situations. Notably, IMS members can receive upon request at no cost, a "Memorandum of Law" concerning private Montessori schools to clarify basic aspects of pertinent legal issues.

### Caution

Since individual legal circumstances vary, IMS advises that the services of a qualified legal practitioner be consulted during the process of legal confrontation.

## Announcements

The College of Early Learning will hold a seminar and workshop on Nov. 14-15, 1981 in Columbia, S.C., the theme of which will be *Perfecting the Montessori Method*. For further information contact: **Bety Holcombe, College of Early Learning, P.O. Box 711, Columbia, S.C. 29202, tel (803) 772-3317.**



## Book Review

### Sea Creatures Do Amazing Things

Pub. Random House, 1981

by Arthur Myers

*Sea Creatures* is the latest addition to the popular and respected Step-Up Nature Library offered by IMS. Such "Step-Up" series books are written especially for children who have outgrown beginning readers and want to find out about the world around them through informative and lively literature.

*Sea Creatures* explores astonishing facts and little known information about some 16 weird sea animals, from the giant clam weighing 500 lbs. to the tiny sea animals called "corals" which build islands big enough for people to live on. The young reader can easily become intrigued with the scientific rationale for distinguishing between plants and animals as these basic life forms in the sea are examined.

This carefully researched and strikingly illustrated book clearly describes biological concepts in lively language suitable for the young child. *Sea Creatures*, like the other "Step-Up" Nature series books, provides an excellent resource for the Montessori classroom to stimulate interest in the 6-11 year old child about the world around it.

**72 pages, hardcover, illustrated, price: \$4.95. Order from IMS.**

### Notice to IMS Members

Mailing labels for new IMS individual members will now include the expiration date of membership clearly visible on such labels; e.g., "10/82" means membership expires in October, 1982. Therefore, individuals will now be able to renew their own IMS membership without special notice from IMS.

Since renewal procedures in the future will provide only a single expiration notice, individual members must renew their own membership to make sure of continued uninterrupted delivery of the "Observer" and eligibility for other membership benefits.

In addition, renewal for multiple years is permitted at the rate of \$15 per year; e.g., \$30 per 2-year membership, \$45 per 3-year membership, etc. A \$100 fee assures a "life" membership.

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## OBSERVER

The Montessori



## Positions & Placements

**Montessori Teacher:** (2-6) Immediate opening for certified teacher in well-equipped school. Established 1970 in Lake Michigan community. Salary negotiable. Send resume to: Johanna Miller, Montessori School of Michigan City, Inc., N. Karwick Rd., Michigan City, IN 46360.

### Child Care Bill

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IMS has noted in communication to Ms. Silvers its concern with respect to the potential for prejudice in such recognition procedure and evaluation which is substantially determined by traditional standards. IMS has indicated its preference for qualification of Montessori schools based on compliance with educational criteria of an appropriate education organization, such as through Montessori school membership in the International Montessori Society.

Although the new legislation appears to enhance the conditions of regulation of Montessori schools in the state, the possibility, if not certainty, for inappropriate regulation appears to remain since the exemption for schools is limited to programs with respect only to children three years of age or older. Apparently, inappropriate day care regulations will persist in force with respect to children ages 2-3. Unless a further exemption or accommodation for programs serving children 2-3 years of age is made in the new day care regulations, many Montessori schools may be forced to bar enrollment of children under three years of age or otherwise be subjected in whole or in part to inappropriate licensing regulations of the Illinois Department of Children and Family Services.

### FTC Threatens

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burdensome disclosure requirements. These regulations, requiring excessive and inappropriate record keeping and disclosure, would place a heavy additional burden on school operation and administration.

IMS submitted comments to FTC in August, 1981 in opposition to these regulations, specifically requesting exemption for "accredited" courses, such as IMS Montessori teacher training programs. Concurring in the basic IMS position, **William Fowler**, executive director of the National Home Study Council stated: "We applaud your strong, refreshing commentary... Accreditation is the consumer's best bet".

IMS asserts that self-regulatory accreditation through such agencies as the International Montessori Council, provide the most effective means of protecting the public against inadequate and unethical operation of private education programs.

### IMS Files Law Suit

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IMS is presently seeking a preliminary injunction to permit enrollment and operation of the teacher training program during the pendency of the case. In addition, monetary and exemplary damages are sought with respect to program approval procedures to which IMS has been subjected since its original application was first submitted in February, 1980.

IMS members may obtain a copy of the complaint and brief in support of the plaintiffs' motion for preliminary injunction from IMS. Send prepaid amount of \$5.00 for each document (\$10.00 for both) to IMS with request, to cover duplication and mailing costs.

### IMS Measures Progress

Cont'd. from page 1, col. 2

Further significant development during this one-year period includes the establishment of the International Montessori Council (accrediting agency for Montessori teacher training programs), addition of two new members to the IMS Advisory Board (**Dr. Arthur Janov**, **Dr. R. Orin Cornett**) and publication of eight issues of the **Montessori Observer**, **Spring, 1981 IMS Montessori School Membership Directory** and a special Montessori publications and materials newsheet.

## History Lesson

—An extract from a medical textbook called **People Skills**, published by Prentice-Hall.

It seems that Frederick, emperor of the Holy Roman Empire in the thirteenth century, was keen to know what language was spoken at the birth of mankind. Did Adam and Eve chatter away in Hebrew, Greek or Latin? He ordered an experiment in which the original circumstances would be recreated as closely as possible. A group of infants were to be kept from hearing speech from the moment of birth until they spoke their language. The babies were to be in the care of wet nurses who were commanded to keep completely silent when with the babies. All the conditions of the experiment were successfully maintained. The result, however, was that every one of the babies died.

The conclusion of the textbook is that "lack of communication is often toxic and can be lethal".

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