



For Immediate Release: Wednesday, October 10, 2007

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BREAKING TODAY: Supreme Court Affirms Parent’s Right to Reimbursement For Private Special Education When Services Are Not Available in the Public Schools; Advocates Applaud Court Ruling In Favor of Educational Opportunities for Children with Disabilities

Today, the United States Supreme Court affirmed the right of parents of children with disabilities to recover the costs of their children’s education when the public school system fails to offer an appropriate educational program. In NYC Department of Education v. Tom F., the court evenly split, leaving undisturbed a lower court determination that Tom F. was entitled to reimbursement for his private school placement. Justice Kennedy took no part in the decision. The case raised the question whether, under the Individuals with Disabilities Education Act (IDEA), a parent can obtain reimbursement for tuition costs at a private school, when the parent unilaterally decides to place the child in private school, based on his/her conclusion that the public school offers no appropriate options.

“This is a victory for parents of students with disabilities across the country. Parents might otherwise be unwilling and unable to risk the financial burden of placing their children in private schools, even when it is obvious that the public school system cannot offer appropriate services,” says Jaclyn Okin Barney, a special education attorney at New York Lawyers for the Public Interest (NYLPI), which filed an amicus brief supporting the parents.

“We are pleased that the Supreme Court did not accept the argument put forward by the New York City Department of Education that a parent is not entitled to reimbursement unless the child had previously received special education and related services under the authority of the public agency,” said attorney Paul Gardephe, partner at the law firm of Patterson, Belknap, Webb & Tyler LLP, who argued the case for the parents. “Congress never intended the IDEA to limit the ability of parents to obtain reimbursement by first requiring attendance at an inappropriate program. To conclude otherwise would lead to completely absurd results,” Gardephe continued.

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"Most important, had the Supreme Court ruled in favor of the DOE, children would be forced to be placed in settings that are potentially harmful to their development just so it can be said that they previously received special education services from the public education system," said Ron Hager, Senior Staff Attorney at the National Disability Rights Network (NDRN), which joined NYLPI on their amicus brief. He continued, "This could have the most profound affect on those with the most significant disabilities who need the services at the earliest stages of their development. In the argument before the Supreme Court, Supreme Court Justice Alito stated that requiring children to be placed in some sort of short term inappropriate placement in the public school would make 'no sense whatsoever'."

Okin Barney said, "We see too many children with special educational needs entering the special education system in Kindergarten or later, and confronting a program that cannot meet his/her needs. The public school system does not always have the appropriate therapies or the capacity to address the social and behavioral needs of children with particular emotional issues."

Tom F. is represented by attorneys from Patterson, Belknap, Webb & Tyler LLP and was assisted by New York Lawyers for the Public Interest (NYPLI). NYLPI and NDRN's amicus brief was submitted by Morrison & Foerster LLP.

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Founded in 1976, New York Lawyers for the Public Interest is a nonprofit, civil rights law firm that strives for social justice. In partnership with member law firms, corporate law departments and other organizations, NYLPI helps underrepresented people develop legal strategies to serve their vision for themselves and their communities. To find out more about NYLPI please call (212) 244-4664 or visit the NYLPI website at www.nylpi.org.