



SUPREME COURT WEIGHS SPECIAL EDUCATION LAW

October 10, 2007

The Supreme Court affirmed a ruling that requires the New York City Schools to pay for the private school special education for a learning disabled child even if the child did not first attend public schools.

Because they decided in a 4-4 ruling (Justice Anthony Kennedy did not participate in the case) a lower court ruling, which sided with the parents of the child in question, will remain in place.

At issue was the nation's cornerstone special education law, the Individuals with Disabilities Education Act (IDEA). Originally enacted in 1970, IDEA mandates public school systems to ensure a Free Appropriate Public Education (FAPE) for special-needs children in their district.

In some cases, that means that if a public school does not have an adequate special education program for a student, the district will pay for that student to attend a private school that does.

The case before the Court, *School Board of New York City vs. Tom F.*, asks whether taxpayers should pay to send a disabled child to a private school if that child has not first tried a special education program offered by a public school.

Private vs. public schooling

In 1995, when Tom Feston's son Gilbert was ready to start kindergarten, the New York City Public School system did not have a program suitable for Gilbert's learning disabilities.

Feston instead enrolled Gilbert into the private Gaynor School on Manhattan's Upper West Side.

Under IDEA, New York Public Schools reimbursed Feston for his son's private education.

Two years later, the city's school system developed an Independent Education Program (IEP) for Gilbert, which recommended that he be placed in a public school with a student to teacher ratio of 15-to-1.

Feston rejected that plan, saying that Gilbert would be better off if he remained at the private school, where that ratio was less than 10-to-1.

Feston presented his complaint to an impartial hearing officer, who agreed that the public school program was inadequate for Gilbert's needs.

The arguments

The School Board argues that now that there is a public program available for Gilbert, it should not have to continue paying for Gilbert's tuition in a private school.

The Board cited a 1997 Amendment to IDEA which stated that only children "who previously received special education and related services under the authority of a public agency" are eligible for tuition reimbursement. The Board says this means that Gilbert must first be enrolled in the public school program before transferring to a private school.

Tom Feston argued that the mandatory "trial period" in the public schools violated his son's right to "appropriate education" of FAPE, because it forces Gilbert to attend a potentially inadequate program just to satisfy a technical requirement for a transfer.

"Children with special education needs have a right, without jumping through hoops, to attend schools capable of providing them with an education that accommodates their individual needs regardless of their family's financial means," Feston said in a statement.

Feston argues that the language of the 1997 Amendment only requires him to cooperate with the public schools, which he did by participating in the development of Gilbert's IEP.

Feston cites the precedent of *Town of Burlington vs. Massachusetts Board of Education* (1985) which mandated public funding of private education in cases where the court deems public services inadequate.

Money vs. principle

For the New York City School Board, this case is about money.

The national average per-pupil expenditure for private education programs was \$25,440 in 2006, nearly five times the per-pupil cost of public programs. (Yet just over 1 percent of special education students receive reimbursement for private education).

In New York City, where the number of tuition reimbursement requests has jumped significantly in recent years, the School Board worries parents are unilaterally enrolling in more expensive private schools without giving the public schools a chance.

Feston, a former Viacom CEO who received more than \$85 million in severance pay last year, doesn't need the school system's money to send Gilbert to Gaynor. Instead, he argues, he is suing to ensure quality education for all special-needs children.

-- *Compiled by Christina Satkowski for NewsHour Extra*

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