

Autism Speaks Applauds Supreme Court Decision Upholding Families' Right to Challenge IEPs Without First Trying Out School District Proposed Placement

WASHINGTON, DC (October 10, 2007) -- By a vote of 4-4, the Supreme Court today upheld the Second Circuit Court decision in the case of *Board of Education of City of New York v. Tom F.*, 06-637, thereby affirming parents' statutory right to challenge a school district's Individualized Education Plan (IEP) without first "trying out" the school district's proposed placement. The New York City Department of Education had argued that even if the child's IEP is demonstrably inappropriate, a parent should not have standing to challenge their child's IEP unless the parent has first "tried out" the school district's IEP.

"Today the court affirmed the danger of making students try out an inappropriate school district program. Students who need early intervention do not have time to waste," said Gary Mayerson, an Autism Speaks board member and founder of law firm Mayerson & Associates. "School districts need to fulfill their statutory responsibility to create an appropriate IEP for every child with a disability or to pay for that student to attend an appropriate private school."

Autism Speaks filed an amicus brief in the case, focusing on the critical nature of early intervention for children with autism. The brief explained why parents of children with autism should not be forced to "try out" demonstrably inappropriate and ineffective IEP programs during what may well be a relatively narrow window of opportunity. Justice Ruth Bader Ginsburg quoted from the brief during oral argument. The brief was prepared as part of The Autism Speaks Federal Legal Appeals Project (FLAP), a national pro bono initiative assembled and directed by Mayerson for Autism Speaks. To date, approximately ten national profile law firms, including Akin Gump Strauss Hauer & Feld, have joined the FLAP committee with commitments to provide significant pro bono legal services at the federal level. Akin Gump attorneys Robert H. Pees, Michael D. Lockard, Amanda R. Johnson, Sunish Gulati and Evandro C. Gigante prepared the amicus brief in the Tom F. case.

"We are relieved that the court's judgment was not clouded by the fact that Tom F. himself was a parent with significant financial means who easily could afford to pay for private school. This ruling has potential to affect all families in the nation. Unfortunately school districts do not always act in good faith when designing a child's IEP. Today they have been told that they must," added Mayerson.

In the case of a tie, the ruling under consideration is affirmed, although it does not set national precedent. In this case, the New York City Board of Education was appealing a ruling by the Second Circuit, which had ruled in favor of Tom F. During oral arguments on October 1, Leonard Koerner, chief appeals lawyer for New York City, said parents should be required to give the public system a shot, even if only a brief one, before they can appeal for an outside placement.