

New York loses special education appeal

By PETE YOST, Associated Press Writer

WASHINGTON - The Supreme Court on Wednesday affirmed a ruling that requires New York City schools to reimburse a wealthy businessman for private special education for his son.

The justices split 4-4 on the case, which means a lower court ruling siding with former Viacom executive Tom Freston remains in place.

Lower courts had ruled in favor of Freston against New York City's board of education, saying the city must pay for educating learning-disabled students in private schools, even when they don't first give the public school system a chance.

New York City's legal department said the decision detracts from schools' abilities to work with parents for the best possible educational outcomes for children with disabilities.

Since the decision is not a precedent which would guide all U.S. public school districts, "we are hopeful that the Supreme Court will resolve this important issue in the near future," the city legal department said in a statement.

The student's parents had insisted that public schools were unable to meet the child's needs. His learning disabilities were diagnosed after he was enrolled in private school.

The board of education had asked the justices to take the case after a lower court said tuition reimbursement is available to the parents under the Individuals With Disabilities Act.

Justice Anthony Kennedy did not participate in the case and the court's two-sentence statement gave no explanation for Kennedy's absence.

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Lawyers for the boy's parents said the special education program proposed by the public school system was inadequate to meet the child's needs.

The parents say that under federal law, they may challenge inappropriate proposals and obtain reimbursement for the costs of placement in private school.

On Sept. 5, 2006, Freston was ousted by Viacom's board, which agreed to pay him \$75 million over three years.

In arguments before the Supreme Court on Oct. 1, New York City's top appeals lawyer argued that when a school district says it has a good program for special ed students, the law requires parents to enroll their children in the program before transferring to private school and seeking reimbursement.

The nation's main special education law guarantees every student a free appropriate public education and requires school systems to pay for private placements when their own programs or classrooms are not suitable.

Nationwide, the number of special education students placed in private schools at public expense has risen steadily, from about 52,012 pupils in 1996 to 71,082 in 2005, according to the U.S. Department of Education. Overall, however, the number of such placements remains relatively small — just 1.1 percent of the country's 6.1 million special education students.

In New York, a growing number of parents have been exploring a private-school option. During the 2002-2003 school year, the city received 3,908 tuition reimbursement requests, officials said. By the 2005-2006 school year, that number had jumped to 4,804.