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ON EDUCATION

Fighting Over When Public Should Pay Private Tuition for Disabled

By [JOSEPH BERGER](#)

Paying for private school is no hardship for Tom Freston, the former chief executive of Viacom, the company that runs MTV and Comedy Central. He left with a golden parachute worth \$85 million.

But he says New York City should reimburse him for educating his son in a private school for children with learning disabilities, where the tuition is \$37,900 a year. In 1997, his son, then 8, was found to be lagging in reading, though not in math. The city offered the child a coveted spot in the Lower Laboratory School for Gifted Education, a competitive school on the Upper East Side that also has classes for students with moderate disabilities. He would have been placed in a classroom with 15 students, and given speech and language therapy.

Mr. Freston, though, wanted a class of only eight students for his son, in a smaller setting. Without trying Lab, he put his child in the Stephen Gaynor School on the Upper West Side, where students, in Gaynor's language, display "learning differences." While the city is required by federal law to pay for private programs for disabled children when it cannot provide appropriate programs, city officials said the Lab program was suitable for Mr. Freston's son and wanted him to try it. After two years of reimbursing the Frestons for a large part of the private school tuition, the city stopped.

The result has been a seesawing lawsuit that the [United States Supreme Court](#) recently took for review. The question: Do school districts have to pay for private school for disabled children if the families refuse to try out public programs?

School systems around the country are closely watching the case. Almost seven million students nationwide receive special-education services, with 71,000 educated in private schools at public expense, according to the United States Department of Education.

Usually school districts agree to pay for these services after conceding they cannot provide suitable ones.

In New York City, for example, 147,000 of the 1.1 million public school children receive special-education services; 7,445 of them, most severely handicapped, attend private schools at taxpayer expense because the city agrees that it cannot properly instruct them, said Lindsey Harr, a spokeswoman for the city education department.

City officials say that is not the case with Mr. Freston's son, or with other children whose families reject the public school system outright. In 2005-6, 2,240 families sued the city for tuition reimbursement for private schools they attended. Half those children never sampled a public school, said Michael Best, the education department's counsel, and the taxpayer tab is well over \$30 million.

"What we're talking about is parents who have never worked with the school system to find appropriate placement," Mr. Best said. "They're making a unilateral decision to place kids in private school. We shouldn't have to pay for it if we can supply the appropriate services."

Mr. Freston's lawyer, Neal H. Rosenberg, said the city effectively acknowledged it could not provide proper services by paying tuition at Gaynor for two years. Mr. Freston himself declined to be interviewed for this column. But in a statement, he said his lawsuit was about principle, not money.

"While I was fortunate to have the means to provide such an opportunity for my child, many families are not able to do so," he said. His goal, he added, is to make sure that all families of disabled children "have access to an appropriate special educational program." He has used the roughly \$50,000 in reimbursements he has received to finance tutoring for lagging first graders at Public School 84 on the Upper West Side.

The Freston case is another in the history of the nation's 32-year-old special-education law that raises uncomfortable questions. The Individuals with Disabilities Education Act, passed under a different name in 1975, protects disabled children in ways mainstream children are not because historically children with disabilities were ill served. But today it can end up financing top-of-the-line programs for disabled students while students in overcrowded or poorly taught mainstream classrooms do not have recourse to private schools.

The Council of the Great City Schools, a coalition of 66 urban systems, has supported the city in the case with a friend-of-the-court brief. Julie Wright Halbert, legislative counsel for the group, said some parents might ask a city's specialists to evaluate their children while planning all along to send them to private schools, banking on a district's being too burdened to contest the reimbursements. "Many wealthy, well-educated people are gaming the system in New York City and around the country," she said.

Some champions of special education programs argue that it is unfair to force children to enroll in public programs just to prove the programs are weak. Matthew Lenaghan, deputy director of Advocates for Children, points out that finding strong instruction promptly is essential. "If a child has autism, does that student have to try a program he knows is inadequate?" he said. Similarly, Scott Gaynor, head of the Gaynor school, said "the goal here is to catch a child before they fail."

VOUCHER advocates are closely watching the case because they feel taxpayers should allow all children, whether handicapped or not, to choose private schooling for themselves and recover the public money that would otherwise have been spent on them. "The first obligation should be to the needs of children, not to the need of any public school system," said Jay P. Greene, professor of education reform at the [University of Arkansas](#).

In some ways, the case has been outrun by realities. Mr. Freston's son is now 17 and has long since rejoined mainstream classes, a success for which Mr. Freston credits private schooling. But it is not clear how his son would have fared at the Lab School.

The case also has a paradox at its heart. Current thinking — and the special-education law itself — urges that disabled children be placed in the "least restrictive environment" — preferably in mainstream classes. But Mr. Freston fought to keep his child in an environment where he would be surrounded only by children with disabilities.

"It's the exact opposite direction which the law says we're supposed to go," Mr. Best said.