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Press Release

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For Immediate Release

**STATE'S HIGHEST COURT CLARIFIES
THE RIGHTS OF NON-CUSTODIAL PARENTS
REGARDING EDUCATIONAL DECISION-MAKING**

***UNANIMOUS RULING BY THE NEW YORK STATE COURT OF APPEALS
MARKS AN IMPORTANT LEGAL PRECEDENT***

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New York, April 30, 2009 – The New York Court of Appeals, the state's highest court, held today that, unless a custody order contains specific language to the contrary, the custodial parent has the exclusive right to control decisions regarding a child's education. The ruling sets an important legal precedent.

The plaintiff in this case, Jesus Fuentes, is the father of a child called M.F., who received special education services when attending public school in New York City. (Initials are used to protect the youth's privacy.) When Mr. Fuentes and M.F.'s mother divorced in 1996, a Family Court custody order granted M.F.'s mother exclusive custody and Mr. Fuentes visitation rights.

Mr. Fuentes asked for a hearing, under the federal Individuals with Disabilities Education Act (IDEA), to assess the special education services M.F. received. Interpreting the IDEA as allowing only custodial parents to request hearings, however, the New York City Department of Education (DOE) declined his request.

Mr. Fuentes then sued the DOE in federal court, claiming that his IDEA rights had been violated. Eventually, a federal appellate court held that Mr. Fuentes had a right to request an IDEA hearing only if, under New York State law, he had authority to make decisions regarding M.F.'s public school education. The federal appellate court "certified" (*i.e.* referred) that question to the New York Court of Appeals.

Today, the New York Court of Appeals unanimously (6-0) held that, unless a custody order "expressly permits joint decision-making authority or designates particular authority with respect to the child's education," the custodial parent has exclusive authority to make decisions regarding the child's education. The Court of Appeals also encouraged parents to determine the allocation of parental authority at the time of separation or divorce, and encouraged non-custodial parents to remain involved in their children's education.

Scott Shorr, a Senior Counsel in the New York City Law Department's Appeals Division, who argued the case in the Court of Appeals, stated: "We are very pleased that the Court has clarified the law in this area. When divorced parents approach a school with conflicting ideas about their child's education, school administrators need a practical and effective way to determine which parent's wishes control. Thanks to today's decision, everyone can rely on the plain language of a custody order to make that determination."

Janice Silverberg and Lisa Grumet of the General Litigation Division handled the lower court matter. Appeals' Barry Schwartz also participated in the case.

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