



"Special Education Services for Students Attending Private School"

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The recent decision of the Pennsylvania Supreme Court in *Lower Merion School District v. Doe*, 593 Pa. 437 (2007), which upheld *Veschi v. Northwestern Lehigh School District*, 772 A.2d 469(Pa. Cmwlth. 2001), reaffirms the rights of private school students in Pennsylvania to seek services under the Individuals with Disabilities Education Act, Section 504 and State Law from their local school districts dually enrolled students..

The Court in *Lower Merion* held that Section 504 of the Rehabilitation Act required the public school district to provide occupational therapy services to an eligible student enrolled in and attending private school. The student had dually enrolled in public school so that he could receive the therapy services. The Court found that Section 504 and its implementing state regulations did not bar the student from attending private school full-time while also enrolling in public school in order to receive services, under section 504.

The *Lower Merion* decision relied heavily on *Veschi*, which detailed the obligation of Pennsylvania's "public educational agencies" to non-public school students and rejected a claim that the IDEA precluded services to non-public school students where the local school district offers an appropriate program in the public schools. Significantly, both courts decided this issue under Section 5-502 of the Pennsylvania Public School Code of 1949. Under Section 5-502, a student in a nonpublic school has the right to "dual enrollment" whereby the student is permitted to attend classes and obtain services on the grounds of the local public school. According to these decisions, such services would typically include classes which currently exist at the school district or which can be provided through existing services on the grounds of the school district.

The *Lower Merion* and *Veschi* decisions profoundly affect public school districts, which must provide disabled students, in their nonpublic schools, with "comparable" or "equitable" services to those of public school students.

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