

Pennsylvania Supreme Court Upholds Provision of §504 Services to Dually Enrolled Student

In a long awaited decision, Pennsylvania's highest court has finally weighed in on the issue of whether school districts must provide services under §504 to students who are dually enrolled. According to the Court, the answer is yes.

In *Lower Merion School District v. Doe*, issued on September 26, 2007, the Court held that a school district was required to provide appropriate §504 services to a student who was eligible for such services, and who was dually enrolled in a private school and the district's school. The Court stressed that the fact that the student was not actually attending the district's schools did not change his entitlement to such services.

In this particular case, the District had evaluated the student and determined that he was eligible for occupational therapy services under §504. The student's parents elected to enroll the child both in a private school and the District's public school so that he could receive the therapy offered by the District. However, because the student was not attending any classes at the District's school, the District refused to provide the therapy. The District argued that because §504 concerns only access to public educational services, and because the student was not participating in such public educational services, the District had no obligation to provide services under §504.

The hearing officer disagreed, ordering the District to provide occupational therapy services to the student, and, on appeal, the Commonwealth Court upheld the hearing officer's order. On appeal to the Pennsylvania Supreme Court, the District argued that the student could not be properly enrolled in the District's school because he did not take any courses at the school, as would seem to be required under Pennsylvania's dual enrollment provisions.

The Supreme Court, however, looked to §504's implementing regulations, which require that recipients of federal financial assistance, i.e., school districts, "shall provide a free appropriate public education to each qualified handicapped person who is *in the recipients' jurisdiction.*" The Court noted that the regulations define appropriate education as "the provision of regular or special education and *related aids and services.*" The Court also looked to Chapter 15 of the Pennsylvania Code, which implements §504, and which states that a "school district shall provide each handicapped student enrolled in the district ... those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program ..."

The Court concluded that in order for a student to obtain the benefits afforded by §504, he must merely be enrolled in a district; he does not need to attend classes at the district's public school. Thus, as long as the student is a district resident, the school district is required to provide what is mandated by §504, in this case, occupational therapy. Moreover, in specifically rejecting the district's argument that services under §504 are a "means of access," the Court stated that the law pertains to access to an "appropriate education" which the district is obligated to provide.

What the Court did not decide in this case was where such services must be provided. Thus, a question still remains as to whether a school district can offer such services only in the district's schools or whether such services can or must be provided to students at the private school. Moreover, the Court did not address circumstances where the services to which the student is entitled are classroom accommodations rather than stand-alone related services such as occupational therapy. How can a district ensure that such services are provided when a student is merely enrolled in the public school, but attending all classes at a private school? Until these issues are brought before the Court in another case, questions such as these will surely continue to be debated.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.