

CHAPTER 14

SPECIAL EDUCATION

Authority

N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 94-142, 101-476 and 99-457.

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See: 30 N.J.R. 1219(b), 30 N.J.R. 2435(a).

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CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 6A:14-1.1 General requirements
- 6A:14-1.2 District eligibility for assistance under IDEA Part B
- 6A:14-1.3 Definitions

SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

- 6A:14-2.1 General requirements
- 6A:14-2.2 Surrogate parents and foster parents
- 6A:14-2.3 Parental consent, notice, participation and meetings
- 6A:14-2.4 Native language
- 6A:14-2.5 Protection in evaluation procedures
- 6A:14-2.6 Mediation
- 6A:14-2.7 Due process hearings
- 6A:14-2.8 Discipline/suspension/expulsions
- 6A:14-2.9 Student records
- 6A:14-2.10 Reimbursement for unilateral placement by parents

SUBCHAPTER 3. SERVICES

- 6A:14-3.1 General requirements
- 6A:14-3.2 Case manager
- 6A:14-3.3 Location, referral and identification
- 6A:14-3.4 Evaluation
- 6A:14-3.5 Determination of eligibility for special education and related services
- 6A:14-3.6 Determination of eligibility for speech-language services
- 6A:14-3.7 Individualized education program
- 6A:14-3.8 Reevaluation
- 6A:14-3.9 (Reserved)

SUBCHAPTER 4. PROGRAMS AND INSTRUCTION

- 6A:14-4.1 General requirements
- 6A:14-4.2 Placement in the least restrictive environment
- 6A:14-4.3 Program options
- 6A:14-4.4 Program criteria: speech-language services
- 6A:14-4.5 Program criteria: supplementary instruction
- 6A:14-4.6 Program criteria: resource programs
- 6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation
- 6A:14-4.8 Program criteria: home instruction
- 6A:14-4.9 Home instruction due to temporary illness or injury for students with or without disabilities
- 6A:14-4.10 Exceptions
- 6A:14-4.11 Statewide assessment
- 6A:14-4.12 Graduation

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

- 6A:14-5.1 General requirements
- 6A:14-5.2 Approval procedures for clinics or agencies

SUBCHAPTER 6. REQUIREMENTS FOR SERVICES IN NONPUBLIC SCHOOLS

- 6A:14-6.1 Equitable participation under IDEA Part B
- 6A:14-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.
- 6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.
- 6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.
- 6A:14-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of disabled students

SUBCHAPTER 7. RECEIVING SCHOOLS

- 6A:14-7.1 General requirements
- 6A:14-7.2 Approval procedures to establish a new receiving school
- 6A:14-7.3 Amendment procedures for receiving schools
- 6A:14-7.4 Annual procedures for private schools for the disabled
- 6A:14-7.5 Responsibilities of district boards of education
- 6A:14-7.6 Provision of programs
- 6A:14-7.7 Termination or withdrawal from a receiving school
- 6A:14-7.8 Fiscal management
- 6A:14-7.9 Records
- 6A:14-7.10 Monitoring and corrective action

SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS AND HUMAN SERVICES, AND THE JUVENILE JUSTICE COMMISSION

- 6A:14-8.1 General requirements
- 6A:14-8.2 Procedural safeguards
- 6A:14-8.3 Provision of programs

SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

- 6A:14-9.1 Monitoring and corrective action
- 6A:14-9.2 Complaint investigation

SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS

- 6A:14-10.1 Early intervention programs serving children between birth and age three
- 6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health and Senior Services for students age three

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

SUBCHAPTER 1. GENERAL PROVISIONS

6A:14-1.1 General requirements

(a) The rules in this chapter supersede all rules in effect prior to July 6, 1998 pertaining to students with disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.); and, in furtherance thereof, to:

i. Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an individualized education program is in effect for the student by that date;

ii. Ensure that a free, appropriate public education is available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade;

iii. Ensure that the services and placement needed by each student with a disability to receive a free, appropriate public education are based on the student's unique needs and not on the student's disability;

2. Ensure that students with disabilities are educated in the least restrictive environment;

3. Ensure the provision of special education and related services;

4. Ensure that the rights of students with disabilities and their parents are protected;

5. Assist public and private agencies providing educational services to students with disabilities; and

6. Ensure the evaluation of the effectiveness of the education of students with disabilities.

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to students with disabilities.

1. Programs and services shall be provided to students age three through 21.

2. Programs and services may be provided by a district board of education at their option to students below the age of three and above the age of 21.

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of children with disabilities below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent;

2. Be administered, supervised and provided by appropriately certified professional staff members;

3. Be located in facilities that are accessible to the disabled; and

4. Meet all requirements of this chapter.

(e) With the exception of students placed in nonpublic schools according to N.J.A.C. 6A:14-6.5, all students with disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(f) Each district board of education shall ensure that the hearing aids worn by children who are deaf and/or hard of hearing are functioning properly.

(g) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.

(h) All public and private agencies that provide educational programs and services to students with disabilities shall maintain documentation demonstrating compliance with this chapter.

Amended by R.2000 d.230, effective June 5, 2000.

See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (b), added i through iii.

Case Notes

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Appropriateness of individualized education program focuses on program offered and not on program that could have been provided. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Individualized program was not appropriate where goals could be objectively evaluated. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Standard in evaluating individualized education program is whether program allows child "to best achieve success in learning." *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Discussion of former regulatory scheme for education of handicapped children. *Henderson v. Morristown Memorial Hospital*, 198 N.J.Super. 418, 487 A.2d 742 (App.Div.1985), certification denied 101 N.J. 250, 501 A.2d 922 (1985).

Student's sudden change in school behavior might not support expulsion if special classification indicated. *K.E. v. Monroe Township Board of Education*, 96 N.J.A.R.2d (EDS) 77.

Individualized education program (IEP) implemented where evidence showed program appropriate and reasonable and student improved under prior IEPs. *A.S. v. Franklin Township Board of Education*, 96 N.J.A.R.2d (EDS) 25.

Funds left unexpended after providing intervention services to handicapped children were not refundable if appropriately applied towards nonspecified operating costs. *Monmouth and Ocean Counties Early Intervention Programs v. Commissioner of Education*, 95 N.J.A.R.2d (EDU) 152.

Stipulation in Pennsylvania court was not an acknowledgment of domicile so as to preclude parents from seeking New Jersey funding for placement of handicapped child. *J.D. and K.D., v. Middletown Board of Education*, 95 N.J.A.R.2d (EDU) 78.

Contracting for speech correctionist services; tenured position abolished. *Impey v. Board of Education of Borough of Shrewsbury*, 92 N.J.A.R.2d (EDU) 197.

6A:14-1.2 District eligibility for assistance under IDEA Part B

(a) For the purposes of this section, each district board of education and State agency program that acts as a district of residence is eligible for assistance under IDEA Part B for a fiscal year by having a special education plan that demonstrates to the satisfaction of the Department of Education through the county office of education that it meets the conditions of (b) through (f) below.

1. If a district board of education has on file with the Department of Education through the county office of education policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect before June 4, 1997, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.

2. Amendments to the policies, procedures and programs shall be made according to the following:

i. The approved policies, procedures and programs submitted by the district of residence shall remain in effect until the county office approves such amendments as the district of residence deems necessary; or

ii. If the provisions of the IDEA Amendments of 1997 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of non-compliance with Federal or State law or regulations, the Department of Education through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

(b) Each district board of education shall have policies, procedures and programs approved by the Department of Education through the county office of education that are in effect to ensure the following:

1. A free appropriate public education according to N.J.A.C. 6A:14-1.1(b)1 is available to all students with disabilities between the ages of three and 21, including students with disabilities that have been suspended or expelled from school;

2. Full educational opportunity to all students with disabilities is provided;

3. All students with disabilities, who are in need of special education and related services, including students with disabilities attending nonpublic schools, regardless of the severity of their disabilities, are located, identified and evaluated according to N.J.A.C. 6A:14-3.3;

4. An individualized education program is developed, reviewed and as appropriate, revised according to N.J.A.C. 6A:14-3.6 and 3.7;

5. To the maximum extent appropriate students with disabilities are educated in the least restrictive environment according to N.J.A.C. 6A:14-4.2;

6. Students with disabilities are afforded the procedural safeguards required by N.J.A.C. 6A:14-2;

7. Students with disabilities are evaluated according to N.J.A.C. 6A:14-2.5 and 3.4;

8. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6:3-6;

9. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and that by the student's third birthday an individualized education program has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);

10. Provision is made for the participation of students with disabilities who are placed by their parents in nonpublic schools according to N.J.A.C. 6A:14-6.1 and 6.2;

11. Students with disabilities who are placed in private schools by the district board of education, are provided special education and related services at no cost to their parents;

12. All personnel serving students with disabilities are appropriately certified and licensed, where a license is required;

13. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided;

i. The district board of education shall maintain information to demonstrate its efforts to:

(1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities;

(2) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that

impedes the learning of students with disabilities and others;

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;

(4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and

(5) Provide for joint training activities of parents and special education, related services and general education personnel; and

14. Students with disabilities are included in Statewide and districtwide assessment programs, with appropriate accommodations, where necessary.

(c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through 14 above.

(d) Annually, each district board of education shall describe how it will use the funds under Part B of the IDEA during the next school year.

(e) Annually, each district board of education shall submit:

1. A report of the numbers of students with disabilities according to their Federal disability category, age, racial-ethnic background, and placement;

2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to students with disabilities and the full-time equivalence of their assignments and relevant information on current and anticipated personnel vacancies and shortages; and

3. Any additional reports as required by the IDEA (20 U.S.C. §§ 1400 et seq.) including, but not limited to, the number of students with disabilities who are:

- i. Exiting education;
- ii. Subject to suspensions and expulsions;
- iii. Removed to interim alternative education settings; and
- iv. Participating in Statewide assessments.

(f) Upon request, reports in addition to those under (e) above shall be submitted to the Department of Education including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated and newly classified.

(g) The LEA shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the IDEA.

Amended by R.2000 d.230, effective June 5, 2000.

See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Rewrote the section.

Case Notes

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Education Act (IDEA) that each state have policies and procedures to ensure that practical method for locating disabled students be developed; neither IDEA nor its regulations established any particular "child find" method to be used, or require states to establish uniform methods. *Baer v. Klagholz*, 771 A.2d 603 (2001).

6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms used in the IDEA.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

"Adult student" means a person who has attained age 18, who is not under legal guardianship and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Approved private school for the disabled" corresponds to "approved private school for the handicapped" and means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

"Assistive technology service" means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;