

4. Speech and language services for a pupil classified as other than "eligible for speech-language services", may be provided as a related service. Additional classification as "eligible for speech-language services" is not required.

5. Transportation shall be provided in the following manner:

i. The district board of education shall provide transportation as required in the individualized education program or as prescribed by the school physician. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school;

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school;

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a pupil assigned; and

iv. For handicapped pupils below the age of five, safety belts or restraint systems are required; and

6. Other related services as specified in the pupil's individualized education program.

(b) School personnel may give advice to parents regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-3.7, added references to "speech-language services".

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Case Notes

Parent of disabled child was not entitled to reimbursement for private physical therapy where sufficient progress had been made in school therapy. C.F. v. West Milford Board of Education, 96 N.J.A.R.2d (EDS) 186.

School board was not required to provide nurse to change student's tracheotomy tube during school as related service under Individuals with Disabilities Education Act (IDEA), as that service fell within Act's medical services exclusion. A.F. v. Toms River Board of Education, 96 N.J.A.R.2d (EDS) 116.

Availability of comparable services at public school precludes school district's financial support of sign language interpreter at private school attended by auditory handicapped student. M.S. v. Washington Township Board of Education, 96 N.J.A.R.2d (EDS) 28.

Neighborhood school with separated first grade classes was most appropriate placement for perceptually impaired student whose attention was easily distracted. I.M. v. Atlantic City Board, 95 N.J.A.R.2d (EDS) 250.

School district was under continued obligation to provide transportation as a related service to handicapped student even though costs had escalated. D.P. v. Mantua Township Board, 95 N.J.A.R.2d (EDS) 218.

Free and appropriate education in public school precluded tuition and transportation for non-approved private school. A.S. v. Hasbrouck Heights, 95 N.J.A.R.2d (EDS) 162.

Student with breathing difficulties in cold weather not entitled to transportation during winter months. A.G. v. Glen Ridge Board, 95 N.J.A.R.2d (EDS) 144.

Transportation from home to private sectarian school which disabled students attended by parental choice was not available. A.K. v. Teaneck Board, 95 N.J.A.R.2d (EDS) 116.

School aide not necessary for neurologically impaired student. N.B. v. West Orange Board of Education, 94 N.J.A.R.2d (EDS) 205.

Demand that the Board of Education pay the cost of one-to-one aides for a 20-year old student with cerebral palsy and mental retardation was dismissed. D.R. v. East Brunswick Board of Education, 94 N.J.A.R.2d (EDS) 145.

Private nursing care; not a related service under the Individuals with Disabilities Act. L.M. v. East Brunswick Township Board of Education, 94 N.J.A.R.2d (EDS) 79.

"Repositioning" following surgery was "related service" for 6-year-old child suffering from cerebral palsy. M.S. v. Barnegat Township Board of Education, 93 N.J.A.R.2d (EDS) 16.

Summer placement at private school was necessary related service for 18-year-old student. C.M. v. Cherry Hill Board of Education, 92 N.J.A.R.2d (EDS) 156.

Board of education not required to provide outside psychotherapy; counseling could be provided within school during school day. Clifton Board of Education v. M.L., 92 N.J.A.R.2d (EDS) 60.

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services according to N.J.A.C. 6:28-3.2 through 3.7.

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:3-6; and

2. Facilitate the entry of the pupil into the local district program, as appropriate.

(c) For a pupil in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-3.8.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

N.J.A.C. reference corrected in (a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

SUBCHAPTER 4. PROGRAMS

6:28-4.1 General requirements

(a) Each district board of education shall provide educational programs and related services for pupils with educational disabilities required by the individualized education programs of those pupils for whom the district board of education is responsible.

(b) Special education programs shall be consistent with the special education plan submitted by the district board of education and approved by the Department of Education.

(c) A district board of education proposal to establish, change or eliminate special education programs or services shall be approved by the Department of Education through its county office.

(d) Appropriate written curricula shall be developed and appropriate materials shall be provided for pupils with educational disabilities.

(e) The length of the school day and the academic year of programs for pupils with educational disabilities shall be at least as long as that established for all pupils.

1. Programs for the preschool handicapped shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of pupil instruction.

2. An extended academic year program shall be comparable to the special education program offered during the regular academic year.

3. Educational programs for pupils classified as eligible for day training shall operate extended school year programs.

(f) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county office.

(g) Physical education services, specially designed if necessary, shall be made available to every pupil with an educational disability age five through 21, including those pupils in separate facilities.

(h) When a pupil with an educational disability transfers from one New Jersey school district to another, or when a pupil classified as educationally disabled by a State or local school district outside of New Jersey transfers into a New Jersey school district, and immediate review of the classification and individualized education program cannot be conducted, the pupil shall be immediately placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days.

(i) When the individualized education program of a pupil with an educational disability does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics, and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of pupils with educational disabilities, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-4 through 16 and this chapter.

(k) Each district board of education shall ensure that all pupils with educational disabilities have available to them the variety of educational programs and services available to nondisabled pupils.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Requirement for physical education services added; at (h) instructions for immediate placement of transfers added; limit of group size in classes in fine arts, music, home economics, sports etc. and new (k) added ensuring variety of programs.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Reference to vocational education deleted in (i)1.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Administrative Correction.

See: 25 N.J.R. 4743(b).

Case Notes

Former standard of service for local school bds. incorporated into the Federal Education of the Handicapped Act. Bd. of Educ. of E. Windsor Regional School v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Regulatory description of appropriate educational program being one in the least restrictive environment found to mean least even in which educational progress rather than regression can take place. Bd. of Educ. of E. Windsor Regional School District v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Focus in determining appropriateness of program is on program offered. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Failure to show that special education student had substantially regressed during the summer supported denial of extended school year services. S.T. v. Ewing Board of Education, 96 N.J.A.R.2d (EDS) 283.

Adverse outcome of prior federal lawsuit brought by handicapped former student against school board for failure to comply with IEP barred current action by student against board. E.A. v. Willingboro Township Board of Education, 96 N.J.A.R.2d (EDS) 113.

Child with increasing difficulties in reading and spelling required perceptually impaired classification to provide him with necessary support in a special education program. *Spring Lake Board v. P.M.*, 95 N.J.A.R.2d (EDS) 267.

Perceptually impaired child was entitled to an extended school year in form of five hours per week of summer tutorial assistance with reasonable and necessary travel expenses. *C.G. v. Old Bridge Board*, 95 N.J.A.R.2d (EDS) 221.

Educational placement out of district was appropriate for perceptually impaired student's educational needs despite parent's noncooperation. *P.M. v. Brick Township Board*, 95 N.J.A.R.2d (EDS) 201.

Residential placement for multiply handicapped child with various diagnosed disorders ranging from loving to potentially injurious was only appropriate placement in least restrictive environment. *Z.D. v. Fort Lee Board v.* 95 N.J.A.R.2d (EDS) 193.

Services of education expert for special education child with maladaptive behavior were no longer necessary. *Services of B.L. v. Englewood City Board*, 95 N.J.A.R.2d (EDS) 125.

Student with multiple disabilities required extra year of special education due to chronic absenteeism. *G.K. v. Roselle Borough*, 95 N.J.A.R.2d (EDS) 86.

Placement out-of-district was not appropriate for handicapped child when opportunities in district were equal. *L.A. v. Union County*, 95 N.J.A.R.2d (EDS) 78.

Provision of all special education services based upon 180-day school year. *S.M. v. Township Board of Education*, 94 N.J.A.R.2d (EDS) 176.

Residential school placement; behavioral problems manifested only in the home environment. *R.W. v. Howell Township Board of Education*, 94 N.J.A.R.2d (EDS) 39.

Multiply handicapped student; transportation by bus company other than one retained by school board. *N.S. v. Trenton Board of Education*, 94 N.J.A.R.2d (EDS) 36.

Removal of an emotionally disabled child from a private school and placing him in public school was not detrimental. In the Matter of *J.C.*, 94 N.J.A.R.2d (EDS) 15.

Placement of an emotionally handicapped and learning disabled child in a special education program was warranted. *Ewing Township Board of Education v. J.R.*, 94 N.J.A.R.2d (EDS) 11.

Constant attention by a registered or licensed practical nurse required by a severely handicapped student was a medical need. *C.F. v. Roxbury Township Board of Education*, 94 N.J.A.R.2d (EDS) 6.

School board would not be liable for expenses of student's attendance at private unapproved placement. *C.D. v. Wanaque Board of Education*, 93 N.J.A.R.2d (EDS) 304.

Program provided by school board; appropriate for child's learning disability. *J.M. v. Manville Bd. of Educ.*, 93 N.J.A.R.2d (EDS) 100.

Board of education had appropriately addressed visually impaired 19-year-old's educational, occupational therapy, mobility and other needs; no obligation to provide special education services following graduation. *L.I. v. Montville Board of Education*, 93 N.J.A.R.2d (EDS) 1.

Changing placement of 10-year-old Downs Syndrome student to in-district special education class was not warranted. *Lakewood Board of Education v. M.C.*, 92 N.J.A.R.2d (EDS) 244.

Petitioners' action to require local school board to pay residential costs and tuition retroactively denied. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

Regulations contain standards for provision of remedial and auxiliary services to non-public school students; future contract for such services forbidden due to contractor's financial standing and fiscal practices. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

6:28-4.2 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities ages three through 21. Educational program options include the following:

1. Instruction in a regular class with all necessary and appropriate supports including, but not limited to, the following:
 - i. Curricular or instructional modifications;
 - ii. Supplementary instruction;
 - iii. Speech-language services;
 - iv. Resource center programs;
 - v. Assistive technology including environmental adaptations;
 - vi. Specialized instructional strategies;
 - vii. Teacher aides; and
 - viii. Related services.
2. A special class program in the pupil's local school district;
3. A special education program in the following settings:
 - i. Another local school district;
 - ii. A vocational and technical school;
 - iii. A county special services school district;
 - iv. An educational services commission; and
 - v. A jointure commission;
4. Programs in hospitals, convalescent centers or other medical institutions;
5. A program operated by a department of New Jersey State government;
6. Vocational rehabilitation facilities;
7. An approved private school for the handicapped in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in an approved private school for the handicapped shall only be made with the prior written approval of the Department of Education through its county office;
8. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for a pupil with an educational disability according to N.J.A.C. 6:28-4.5;
9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5;

10. Instruction in other appropriate settings according to N.J.A.C. 6:28-1.1(d) and (e); and

11. An early intervention program (which is under contract with the Department of Health) in which the child has been enrolled for the balance of the school year in which the child turns age three.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Referenced "private school for handicapped", deleted "privately operated special class".

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (a)9 added, an accredited nonpublic school.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Added new (b); the three program options available for preschool handicapped pupils.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Changes to reflect the change from "resource room" to "resource center program".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Amended by R.1995 d.228, effective May 1, 1995.

See: 27 N.J.R. 416(c), 27 N.J.R. 1792(a).

Case Notes

Former N.J.A.C. 6:28-4.3 upheld. *D.S. v. Bd. of Ed., East Brunswick Twp.*, 188 N.J.Super. 592, 458 A.2d 129 (App.Div.1983), certification denied 94 N.J. 529, 468 A.2d 184 (1983).

Jurisdiction of Juvenile and Domestic Relations Court to place a pupil in an appropriate educational program. *State in Interest of F.M.*, 167 N.J.Super. 185, 400 A.2d 576 (J.D.R.Ct.1979).

Autistic preschooler was not ready to be mainstreamed for nonacademic courses. *C.L. v. State Operated School District*, 96 N.J.A.R.2d (EDS) 331.

Special education student was entitled to remain at out-of-state extended year program he had attended previous year, even though program lacked state approval. *G.B. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 284.

Emergency relief request for summer school for disabled preschooler was denied on grounds that it merely represented extension of ten-month school year. *N.R. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 270.

Emergency relief request for summer in-home tutor was denied absent evidence of probable regression or lack of appropriate education. *C.N. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 259.

Request for summer instruction was granted for classified student whose test scores showed regression. *S.M. v. Ocean Gate Board of Education*, 96 N.J.A.R.2d (EDS) 207.

Escalating misconduct warranted home instruction pending out-of-district placement for behavioral modification. *West Windsor v. J.D.*, 95 N.J.A.R.2d (EDS) 146.

Behavioral difficulties of disabled student precluded mainstreaming in regular school setting. *J.T. v. Collingswood Board*, 95 N.J.A.R.2d (EDS) 129.

Residential costs of impaired student in private placement pursuant to civil commitment were not responsibility of school board. *M.M. v. Kinnelon Board*, 95 N.J.A.R.2d (EDS) 120.

Student with attention deficit disorder was more appropriately placed in private school. *R.S., A Minor v. West Orange Board*, 95 N.J.A.R.2d (EDS) 59.

Structured, self-contained environment was more appropriate for student with psychiatric problems and truancy. *M.M. v. Dumont Board*, 95 N.J.A.R.2d (EDS) 50.

Trainable mentally retarded student was more appropriately placed in vocational as opposed to regular school. *B.M. v. Vineland Board*, 95 N.J.A.R.2d (EDS) 43.

Residential placement of handicapped student not necessary. *J.M. v. Morris Board of Education*, 95 N.J.A.R.2d (EDS) 10.

Current placement in public school system, rather than residential placement, was more appropriate for multiply handicapped child. *J.M. v. Board of Education*, 95 N.J.A.R.2d (EDS) 10.

Seeking to send their students to a district outside the state was not arbitrary, capricious or unreasonable. *Campbell v. Montague Township Board of Education*, 94 N.J.A.R.2d (EDU) 443.

Autistic child was ordered to continue in his in-home educational program. *M.A. v. Voorhees Board of Education*, 94 N.J.A.R.2d (EDS) 133.

Placement of Down's Syndrome child in private school was inappropriate. *C.S. v. Middletown Board of Education*, 94 N.J.A.R.2d (EDS) 97.

Disabled child was not entitled to reimbursement for private school placement. *M.K. v. Caldwell-West Caldwell Board of Education*, 94 N.J.A.R.2d (EDS) 55.

Educational needs of 4-year-old autistic child were met by placement in preschool handicapped program. *K.M. v. Franklin Lakes*, 93 N.J.A.R.2d (EDS) 213.

Placement in 24-hour residential program was required for 19-year-old multiply handicapped student. *J.S. v. High Point*, 93 N.J.A.R.2d (EDS) 192.

Transfer to middle school to provide handicapped child with appropriate education in less restrictive environment was justified. *P.G. and E.G. v. Upper Pittsgrove*, 93 N.J.A.R.2d (EDS) 189.

Personalized educational program and support services were sufficient to allow handicapped student to make significant educational progress. *J.J.K. v. Union County Board*, 93 N.J.A.R.2d (EDS) 161.

Significant regression required extension of school year for multiply handicapped student. *J.C. v. Wharton*, 93 N.J.A.R.2d (EDS) 152.

Student's explosive and violent behavior required placement in structured educational environment. *Ocean City v. J.W.* 93 N.J.A.R.2d (EDS) 147.

Appropriate education was provided in mainstreamed school, thus precluding placement of deaf student in segregated school. *S.M. v. Bergenfield*, 93 N.J.A.R.2d (EDS) 115.

Application by parents for emergent relief to return their emotionally disturbed daughter to high school transitional program pending hearing was denied. *S.H. v. Lenape*, 93 N.J.A.R.2d (EDS) 87.

Board of education could have provided appropriate placement for 12-year-old student; no reimbursement for parents' unilaterally enrolling student in private school. *J.S. v. Blairstown Board of Education*, 93 N.J.A.R.2d (EDS) 81.

In-district placement of 15-year-old neurologically impaired student was appropriate; no reimbursement for unilateral placement out-of-district. *T.G. v. Middletown Township Board of Education*, 93 N.J.A.R.2d (EDS) 66.

Appropriate placement for neurologically impaired seven-year-old student was at in-district school even if not placement preferred by parents. *A.E. v. Caldwell-West Caldwell Board of Education*, 93 N.J.A.R.2d (EDS) 62.

County region school district failed to establish that self-contained Trainable Mentally Retarded program at in-district school was appropriate educational program for Downs Syndrome student. *A.R. v. Union County Regional High School District*, 93 N.J.A.R.2d (EDS) 48.

Appropriate placement for three-year-old child having developmental disorder was in local school district program. *W.B. v. Metuchen Board of Education*, 93 N.J.A.R.2d (EDS) 35.

Placement in out-of-district facility offering behavioral modification, rather than readmission to public school, was appropriate for suspended high school student. *V.D. v. North Hunterdon Board of Education*, 93 N.J.A.R.2d (EDS) 21.

Day placement was appropriate for 19-year-old multiply handicapped student with obsessive compulsive disorder. *T.W. v. Monroe Township Board of Education*, 93 N.J.A.R.2d (EDS) 14.

Neurologically impaired self-contained class, with appropriate mainstreaming, at public high school was appropriate and least restrictive placement for student. *J.F. v. Riverdale Regional High School*, 93 N.J.A.R.2d (EDS) 7.

Residential placement of 16-year-old multiply handicapped student at group-home facility not educationally necessary. *M.L. v. Summit Board of Education*, 92 N.J.A.R.2d (EDS) 239.

Appropriate placement for 12-year-old multiply handicapped student was Township public school system; appropriate individualized educational program could be developed. *T.H. v. Wall Township Board of Education*, 92 N.J.A.R.2d (EDS) 227.

No private school reimbursement; board of education offered free and appropriate education for communication handicapped student. *V.G. v. Jefferson Township Board of Education*, 92 N.J.A.R.2d (EDS) 212.

Record established that current day placement was least restrictive and appropriate education for emotionally disturbed 11-year-old boy. *R.R. v. Mt. Olive Board of Education*, 92 N.J.A.R.2d (EDS) 205.

Record established that multiply handicapped student's educational needs could not be met by perceptually impaired class offered by board of education. *Alloway Township Board of Education v. M.P.*, 92 N.J.A.R.2d (EDS) 202.

Placement of attention deficit disorder student in regional school district program was most appropriate and least restrictive placement. *T.P. v. Delaware Valley Board of Education*, 92 N.J.A.R.2d (EDS) 175.

Record supported classification of child as neurologically-impaired; placement in one ½ day kindergarten class and one ½ day neurologically-impaired class. *D.M. v. Union City Board of Education*, 92 N.J.A.R.2d (EDS) 143.

Appropriate placement of 6-year-old, neurologically impaired student was in self-contained neurologically impaired special education class at in-district school. *A.F. v. Roselle Board of Education*, 92 N.J.A.R.2d (EDS) 118.

Mainstreaming sixth grade student for remainder of school year not shown to be appropriate. *D.E. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 116.

Out-of-state residential school appropriate placement for 16-year-old boy who was auditorily and emotionally impaired. *J.P. v. Metuchen Board of Education*, 92 N.J.A.R.2d (EDS) 110.

Placement of child was inappropriate to meet his educational needs; parents entitled to private school tuition reimbursement. *J.S. v. Livingston Board of Education*, 92 N.J.A.R.2d (EDS) 94.

Individualized Education Plan recommending that perceptually impaired student be educated at public middle school was appropriate. *Passaic Board of Education v. E.G.*, 92 N.J.A.R.2d (EDS) 86.

Morning preschool handicapped class placement sufficient. *M.G. v. East Brunswick Board of Education*, 92 N.J.A.R.2d (EDS) 84.

Day placement, not residential placement, was appropriate for multiply handicapped student. *J.B. v. Township of Montville Board of Education*, 92 N.J.A.R.2d (EDS) 65.

Placement of hearing-impaired child; local elementary school appropriate. *A.M. v. Madison Board of Education*, 92 N.J.A.R.2d (EDS) 51.

Record established that placement in program offered by school district was appropriate; no placement in out-of-state school. *H.S. v. Bloomfield Board of Education*, 92 N.J.A.R.2d (EDS) 39.

Unilateral decision to place the child in a private school; no tuition reimbursement. *C.R. v. Delaware Valley Regional School District*, 92 N.J.A.R.2d (EDS) 31.

Private school, and not proposed public school placements, provided appropriate education in least restrictive environment for severely mentally retarded student classified as educable mentally retarded. *Jo.M. and S.M. on Behalf of Their Daughter, J.M. v. Monmouth Regional Board of Education*, 92 N.J.A.R.2d (EDS) 9.

Although petitioners sought private school placement for their seven year old, classified as emotionally disturbed, the OAL judge determined that a self-contained, age appropriate, emotionally disturbed placement in respondent's school system was the appropriate placement for the child. *B.P. and E.P. Parents of J.P. v. City of Newark Bd. of Educ.*, 9 N.J.A.R. 190 (1986).

Petitioners' action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for their 13 year old son, classified as neurologically impaired, denied; finding that local board had attempted to provide a free appropriate education, with personalized instruction and sufficient support services to allow the child to benefit educationally. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Parents not entitled to reimbursement for private school tuition following unilateral withdrawal of pupil from special education program. *Robinson v. Goodwin*, 1975 S.L.D. 6.

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) Supplementary instruction and speech-language services provided to a pupil with an educational disability shall be in addition to the regular instructional program and shall meet the following criteria:

1. Speech-language services shall be given individually or in groups not to exceed three pupils;
2. Supplementary instruction shall be given individually or in groups not to exceed five pupils;
3. A teacher providing supplementary instruction shall be appropriately certified for the subject or level in which instruction is given according to the requirements of N.J.A.C. 6:11;
4. Supplementary and resource room instruction shall not be provided to pupils by the same teacher during the same instructional period; and
5. Speech-language services shall be provided by a certified speech correctionist or speech-language specialist.

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1. A pupil with an educational disability in a resource center program shall be enrolled on a regular class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource center program teacher and the regular class teacher(s) as described in the individualized education program.

2. The resource center teacher shall hold certification as teacher of the handicapped. If the resource center program solely serves pupils who are classified as visually handicapped, the teacher must be certified as a teacher of blind or partially sighted. If the resource center program solely serves pupils who are classified as auditorily handicapped, the teacher must be certified as a teacher of deaf and/or hard of hearing.

3. Resource center programs shall provide two types of instruction or service:

i. Instruction which replaces that provided in the regular class;

ii. Instruction which supports or supplements instruction initially provided by the regular class teacher; and

iii. Support and replacement instruction shall not be provided to pupils by the same teacher during the same instructional period.