

CHAPTER 6A**SPECIAL EDUCATION PROGRAM****Authority**

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2005 d.261, effective July 11, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Chapter Expiration Date

Chapter 6A, Special Education Program, expires on July 11, 2010.

Chapter Historical Note

Chapter 6A, Special Education Program, was adopted as R.1982 d.462, effective January 3, 1983. See: 14 N.J.R. 930(a), 15 N.J.R. 25(b).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1987 d.200, effective May 4, 1987, operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1990 d.169, effective March 19, 1990. See: 21 N.J.R. 2693(a), 22 N.J.R. 916(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.1995 d.176, effective February 27, 1995. See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.2000 d.94, effective February 10, 2000. See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Chapter 6A, Special Education Program, was readopted as R.2005 d.261, effective July 11, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY**1:6A-1.1 Applicability**

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6A:14. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (a), substituted "6A:14" for "6:28".

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)1994, 42 F.3d 149, rehearing and rehearing in banc denied.*

Law Reviews and Journal Commentaries

Procedural Basics of Special Education Hearings. Joseph R. Morano, 222 N.J.L.J. 1 (2003).

SUBCHAPTERS 2 THROUGH 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6A-4.1 Mediation by the Department of Education

(a) Upon receipt of a hearing request, the Department of Education shall promptly contact the parties to offer mediation.

1. If both parties consent to mediation, a mediation conference shall be held within 10 days of the hearing request.

2. If mediation is declined by either party, the Department of Education shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

(b) If the mediation conference results in a settlement, the terms shall be reduced to writing and signed by the parties and the representative of the Department of Education.

(c) If the mediation conference does not result in a settlement, the Department of Education representative shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

(d) The Department of Education shall transmit any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties to the assigned judge prior to the scheduled hearing date. Parties shall file any motions or other documents with the assigned judge.

(e) An administrative law judge may grant an adjournment of the mediation conference upon the written consent of both parties to an extension of the deadline for decision.

Amended by R.1990 d.405, effective August 6, 1990.

See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

In (f): Added language specifying that parents shall provide the Department with a telephone number for contact.

Recodified from N.J.A.C. 1:6A-4.2 and amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote the section. Former N.J.A.C. 1:6A-4.1, Notice of available legal service, repealed.

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

In (a), substituted "offer mediation" for "determine whether mediation is requested" in the introductory paragraph and rewrote 2; rewrote (c) and (d).

Case Notes

Federal law did not preempt regulation prohibiting lay person with special knowledge or training in the education of handicapped children from receiving fees for legal representation. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Act permitting parents to be accompanied and advised by specially qualified individuals did not permit those specially qualified individuals to render legal services at the hearings. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Rule prohibiting fees to nonlawyers for legal representation does not deny nonlawyers equal protection. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Lay person is not precluded from receiving fees for work done as an expert consultant or witness at hearing held to determine appropriateness of education being provided to handicapped children. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Stipulation of settlement reached in suit seeking residential placement did not bar action in federal district court demanding funding. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Possible adjustment of computer program for multiply handicapped child's home use was more appropriately addressed by agency than by emergent relief. *M.S. v. Mount Laurel Board*, 95 N.J.A.R.2d (EDS) 220.

1:6A-4.2 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

1:6A-4.3 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless a party requests an adjournment and the judge approves the adjournment to a specific date. Any such adjournment shall extend the deadline for decision, as established in N.J.A.C. 1:6A-18.1, Deadline for decision, by an amount of time equal to the adjournment.

Case Notes

Commissioner of Education lacks jurisdiction to enforce settlement agreement in special education case. *Bellesfield v. Randolph Township Board of Education*, 96 N.J.A.R.2d (EDU) 35.

SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation

(a) At a hearing, any party may be represented by legal counsel or accompanied and advised by individuals with