

1. The individualized education program shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. The individualized education program shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.

(d) Whenever parental consent for initial evaluation is requested, a parent(s) identifies to the district board of education a child age three to five as potentially preschool handicapped or a notice is sent to the parent(s) to reevaluate, the parent(s) shall receive a copy of the procedural safeguard rights under this subchapter and N.J.A.C. 1:6A.

(e) Upon determination of a pupil's eligibility for special education and/or related services, by the child study team, the parent(s) or adult pupil shall receive a copy of this chapter.

(f) Upon request by a parent or adult pupil, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-2), and information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) If the mediation according to N.J.A.C. 6:28-2.6 or due process hearing according to N.J.A.C. 6:28-2.7 involves initial admission to the public school of a child age three through 21, the child, with the consent of the parent(s), shall be placed in the public school program or a placement agreed to by the parent(s) and district board of education pending the outcome of the hearing.

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

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

Reference in (f) to legal services, old (g) and (h) deleted, new (g) added re: placement in public school.

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

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

In (c), added 1 and designated existing language as 2. In (f), changed "parental request" to "request by a parent or adult pupil". In (g), child age "three" was "five".

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

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

At (c)2., 30 day time frame required; 90 day option deleted.

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

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

#### Case Notes

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school programs; determination of appropriate placement. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Emergency relief request regarding classified student's suspension was rendered moot by student's withdrawal from school. *Brick Township Board of Education v. M.F.*, 96 N.J.A.R.2d (EDS) 127.

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.

Impaired student's research paper was acceptable for grading as long as marking periods in subject were passed. *T.D. v. Rutherford Board*, 95 N.J.A.R.2d (EDS) 47.

Parents not entitled to emergent relief; no evidence offered to show that student was socially maladjusted. *N.P. v. Freehold Regional High School*, 94 N.J.A.R.2d (EDS) 218.

Handicapped child with increasing level of seizure activity; extended-year residential care. *J.S. v. West Windsor-Plainsboro Regional Board of Education*, 94 N.J.A.R.2d (EDS) 152.

Emergency placement for neurologically impaired child was not available absent evidence of irreparable harm. *M.B. v. Manville*, 93 N.J.A.R.2d (EDS) 233.

Student, classified as perceptually impaired, who filed an application for emergency relief return to to his previously established course of study was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. *Milt v. East Windsor Regional School District*, 9 N.J.A.R. 159 (1986).

State Department of Human Services not a necessary party to special education placement determination; joinder of party denied due to lack of authority; consolidation denied as unqualified. *A.N. v. Clark Bd. of Ed.*, 6 N.J.A.R. 360 (1983).

Standing of foster parents (citing former regulations). *Orr v. Bd. of Ed., Caldwell-West Caldwell, Essex Cty.*, 1976 S.L.D. 264.

#### 6:28-2.2 Surrogate parents

(a) Each district board of education or responsible State agency shall ensure that the rights of a pupil are protected through the provision of an individual to act as surrogate for the parent and assume all parental rights under this chapter, when either:

1. The parent(s) cannot be identified according to N.J.A.C. 6:28-1.3;
2. The parent(s) cannot be located after reasonable efforts; or
3. The pupil is a ward of the State of New Jersey.

(b) Each district board of education or responsible State agency shall establish a method for selecting and training surrogate parents.

(c) The person serving as a surrogate parent shall have:

1. No interest that conflicts with those of the pupil he or she represents; and
2. Knowledge and skills that ensure adequate representation of the pupil.

(d) The person(s) serving as a surrogate parent may not otherwise be an employee of the local school district or responsible State agency. A surrogate parent may be paid solely to act in that capacity.

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

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

Reference to "responsible State agency" added throughout.

## Case Notes

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school programs. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Regulation valid. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

**6:28-2.3 Parental notice, consent, participation and meetings**

(a) Consent shall be obtained:

1. Prior to initial evaluation; and
2. Prior to initial implementation of a special education program and/or related services resulting from (a)1. above.

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that identification.

(c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes or declines to initiate or change the identification, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;
2. Requests consent;
3. Plans to conduct a reevaluation; or
4. Approves or denies the written request of the parent(s) to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil.

(d) Written notice, according to (c)1 through 4 above, shall be provided to the parent(s) no later than 15 calendar days after making a determination and in no event less than 15 calendar days prior to the date for implementation, unless the parent(s) otherwise consents. If the parent(s) consents to implementation before the 15 days have elapsed, documentation of such consent shall be maintained.

(e) On receipt of any written parental request, written notice shall be provided to the parent(s) within 30 calendar days.

(f) Notice shall be written in language understandable to the general public and shall include:

1. A description of the action proposed or denied by the district board of education including:
  - i. An explanation of why it is taking such action; and

ii. A description of any options the district board of education considered and the reasons why those options were rejected;

2. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action; and

3. A copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents and/or adult pupils. A parent or adult pupil may refuse additional copies of the statement. District boards of education shall maintain documentation that the statement was made available each time written notice was provided to a parent and/or adult pupil.

(g) A district board of education shall take steps to ensure that the parent(s) is given the opportunity to participate in:

1. Evaluations of the pupil;
2. The determination of the pupil's eligibility for special education and/or related services;
3. The development of an individualized education program according to N.J.A.C. 6:28-3.6; and
4. The annual review.

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the pupil's individualized education program.

1. Each meeting shall include the following participants:

- i. The parent(s);
- ii. Teacher(s) having knowledge of the pupil's educational performance;
- iii. The pupil, where appropriate;
- iv. At least one member of the child study team; and
- v. Certified school personnel identifying the pupil as potentially educationally disabled, the school principal or designee and other appropriate individuals if they choose to participate.

2. Parent(s) shall be notified in writing of meetings early enough to ensure that they will have an opportunity to attend.

3. Meetings shall be scheduled at a mutually agreed upon time and place.

4. Notice of meetings shall indicate the purpose, time, location and participants.

5. If the parent(s) cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation, including the use of individual or conference telephone calls. Documentation shall be maintained of all attempts to secure parental participation.

6. A meeting may be conducted without the parent(s) in attendance if the district board of education is unable to secure the participation of that parent(s).

(i) An adult pupil shall be given notice and participate in meetings according to (a) through (f) above.

(j) When requesting consent to conduct an initial evaluation or for initial implementation of a special education program and/or related services for an adult pupil, consent shall be obtained from the adult pupil and notice shall be provided to the adult pupil and his or her parent(s).

(k) Adult pupils shall be given a copy of this chapter and the procedural safeguards statement published by the New Jersey Department of Education upon attainment of the eighteenth birthday.

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

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

(a) through (c) deleted; new (a) through (i) added.

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

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

Added new (a) and (b); redesignated existing (a) through (i) as (c) through (k), with revisions to (c), (f), (h), and (k).

Administrative Correction to (d): changed the cross reference from (a)1 through 5 to (c)1 through 4.

See: 22 N.J.R. 3365(a).

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).

#### Case Notes

Recommended placement of handicapped child in its preschool handicapped program satisfied requirement for an "appropriate" education. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

Recommended placement of handicapped child in new public school program did not violate the Individuals with Disabilities Education Act. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

Federal due process requirements (citing former N.J.A.C. 6:28-1.9). Levine v. State Dept. of Institutions and Agencies, 84 N.J. 234, 418 A.2d 229 (1980).

Handicapped child's pre-school educational program was appropriate since it conferred meaningful educational benefit for child. A.E. v. Springfield Board of Education, 96 N.J.A.R.2d (EDS) 128.

Mother of third-grader who exhibited serious behavioral and educational problems was properly ordered to produce child for evaluations by child study team. Linden Board of Education v. T.T., 96 N.J.A.R.2d (EDS)105.

Parents' refusal to cooperate compels administrative order to place special education student in out-of-district facility recommended under individualized education plan. Lawrence Township Board of Education v. C.D., 96 N.J.A.R.2d (EDS) 98.

Objection to emotionally disturbed classification and out-of-district placement of student with discipline problems dismissed after both classification and placement found to be justified. L.M. v. Vinland Board of Education, 96 N.J.A.R.2d (EDS) 93.

Student classified as neurologically impaired was properly ordered placed in self-contained class despite lack of parental consent to such placement. Jersey City Board of Education v. J.H., 96 N.J.A.R.2d (EDS) 92.

Poor academic performance and consistent misbehavior warranted comprehensive evaluation of child over parent's consent to determine value of special education classification. Voorhees Township Board In Interest of S.H., 95 N.J.A.R.2d (EDS) 228.

Intervention in form of an evaluation by child study team was necessary for child with possible educational disability notwithstanding parent's lack of consent. Parsippany-Troy Hills Board v. B.H., 95 N.J.A.R.2d (EDS) 225.

Child's possible educational disability warranted comprehensive evaluation by child study team despite parent's failure to appear. Union Township Board v. T.K.J., 95 N.J.A.R.2d (EDS) 224.

Inappropriate, aggressive and hostile behavior necessitated an order permitting school district to test and evaluate child despite lack of consent from parents. Jersey City Board v. T.W., 95 N.J.A.R.2d (EDS) 211.

Poor academic performance and behavior necessitated child's classification, program and placement even though parent was inaccessible and unresponsive. M.F. v. Piscataway Board, 95 N.J.A.R.2d (EDS) 206.

Lack of parental consent did not preclude evaluation of failing student for special education services. South Brunswick Board v. J.R., 95 N.J.A.R.2d (EDS) 161.

Parent could not further delay in arranging neurological examination for impaired child. Upper Freehold Regional v. T.S., 95 N.J.A.R.2d (EDS) 123.

Student with serious educational and behavioral problems with sexual overtones required emergent relief to complete child study team evaluations. Dumont Board v. G.C., 95 N.J.A.R.2d (EDS) 119.

Student with serious behavioral and educational problems required evaluation without parental consent. Jersey City Board v. C.F., 95 N.J.A.R.2d (EDS) 113.

Mother of disabled student required to participate in interview with school district. Jersey City State-Operated School District v. M.B., 95 N.J.A.R.2d (EDS) 8.

Board of Education entitled to administer initial evaluation for special education services of student, no parental consent. Jersey City Board of Education v. T.W., 95 N.J.A.R.2d (EDS) 6.

Classification of neurologically impaired student changed to emotionally disturbed. D.I. v. Teaneck, 93 N.J.A.R.2d (EDS) 237.

Lack of proper notice to parents of board's placement decision under former N.J.A.C. 6:28-1.9; review meeting under former N.J.A.C. 6:28-1.8. A.N. v. Clark Bd. of Ed., 5 N.J.A.R. 152 (1983).

#### 6:28-2.4 Native language

(a) Written notice to the parent(s) and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and pupil unless it is not feasible to do so.

1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent(s).

2. The determination of the language or mode of communication and written rationale for its choice shall be documented in the pupil record.

3. If it is not feasible to translate the individualized education program or eligibility reports into another language or mode of communication, the professional(s) making this decision shall ensure and document that the parent(s) is given an English language copy of the report(s) and appropriate explanation of its contents in the language of the parent.

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

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

Word "justification" changed to "rationale" at (a)2. and "or mode of communication" added at (a)3.

### 6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of educationally disabled pupils shall:

1. Be selected and administered by the appropriate members of a multi-disciplinary team of professionals consisting of members of the child study team, the school physician and where appropriate, other specialists according to N.J.A.C. 6:28-3.5, each employing two or more appropriate evaluation procedures. At least one member of the multidisciplinary team shall be knowledgeable in the area of the suspected disability;

2. Be used by personnel certified and trained in the administration and interpretation of such procedures;

3. Have been validated for the purpose(s) for which they are administered;

4. Be selected and administered;

i. So that the pupil's cultural background and language abilities are taken into consideration; and

ii. In the pupil's native language or other mode of communication unless it is clearly not feasible to do so;

5. Be selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6. Be selected and administered so as not to be racially or culturally discriminatory;

7. Be conducted on an individual basis;

8. Use information from group tests only to supplement individual evaluations;

9. Consider the pupil's sociocultural background and adaptive behavior in home, school and community; and

10. Result in a written report which shall be dated and signed by the individual who originated the data.

(b) A parent may request an independent evaluation if there is disagreement with the evaluation provided by a district board of education.

1. Such independent evaluation(s) shall be provided at no cost to the parent(s) unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.

2. Any independent evaluation purchased at public expense shall:

i. Be conducted according to N.J.A.C. 6:28-3.4; and

ii. Be obtained from another public school district, Educational Services Commission, Jointure Commission or a clinic or agency approved under N.J.A.C. 6:28-5.

3. An independent medical evaluation may be obtained according to N.J.A.C. 6:28-5.1(c)3.

(c) Upon receipt of parental request, each district board of education shall provide information about where an independent evaluation may be obtained.

(d) Any independent evaluation submitted to the district child study team shall be considered in making decisions regarding special education and/or related services.

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

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

Clarified makeup of multi-disciplinary team and expanded procedure requirements.

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

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

In (a)5, added exception regarding "intended purpose of the testing".

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

Mainstreaming with part-time one-on-one therapy found to be appropriate placement for pupil with severe hearing loss. *Bonadonna v. Cooperman*, 619 F.Supp. 401 (D.N.J.1985).

School board may deny parents' request for additional assessment or evaluation where numerous previous assessments provide sufficient basis for evaluating student. *Hamburg Board of Education v. A.H.*, 96 N.J.A.R.2d (EDS) 87.

Weaknesses shown did not constitute deficits requiring independent evaluation of student for classification as handicapped. *Freehold Regional v. R.G.*, 93 N.J.A.R.2d (EDS) 234.

### 6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1. Attempts to resolve conflicts between the parent(s) and the district board of education prior to a request for a due process hearing are encouraged; however, a request for mediation is not a prerequisite to a hearing;

2. If either party is unwilling to participate in mediation, a request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education;

## Case Notes

New Jersey limitations did not bar parents from seeking retroactive reimbursement. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents did not waive right to reimbursement by unilaterally placing student in private school and failing to initiate review proceedings. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents exhausted administrative remedies. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Stipulation of settlement reached in suit under IDEA seeking residential placement did not bar action for funding of residential placement and for compensatory education. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Parents of emotionally disturbed student were "prevailing parties" entitled to recover attorney fees; services performed at administrative level. *Field v. Haddonfield Bd. of Educ.*, D.N.J.1991, 769 F.Supp. 1313.

Administrative law judge lacked jurisdiction to conduct "due process" hearing to determine financial responsibility of State Department of Human Services for special education costs of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Superior Court, Law Division did not have jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

School district has burden of proving that proposed individualized education program is appropriate. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Parents awarded private education reimbursement following improper placement by child study team entitled to interest on expenses from date of disbursement; counsel fee award not permitted (citing former N.J.A.C. 6:28-1.9). *Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty.*, 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

Untimely request precluded reimbursement due process hearing for unilateral enrollment of child in private school. *J.F. v. West Windsor-Plainsboro Board of Education*, 96 N.J.A.R.2d (EDS) 119.

Special education student subject to regular school disciplinary process if different standard not applicable. *M.G. v. Brick Township Board of Education*, 96 N.J.A.R.2d (EDS) 82.

School district may evaluate potentially educationally disabled student over parent's objection. *Morris School District v. V.S.*, 96 N.J.A.R.2d (EDS) 37.

Father's unexcused failure to appear following notice required dismissal of request for due process hearing on disciplined student's individualized education program. *G.M. v. Vineland Board*, 95 N.J.A.R.2d (EDS) 233.

Inappropriate, aggressive and hostile behavior necessitated an order permitting school district to test and evaluate child despite lack of consent from parents. *Jersey City Board v. T.W.*, 95 N.J.A.R.2d (EDS) 211.

Child study team evaluation requested by one parent was not required for progressing student in joint custody after divorce when opposed by other parent. *R.F. v. Saddle Brook Board*, 95 N.J.A.R.2d (EDS) 187.

Student with serious behavioral and educational problems required evaluation without parental consent. *Jersey City Board v. C.F.*, 95 N.J.A.R.2d (EDS) 113.

Absence of evidence that student would regress; speech and language therapy summer session. *K.K. v. Washington Township Board of Education*, 94 N.J.A.R.2d (EDS) 171.

12-year old student was given an emergency relief due process hearing and ordered to undergo a Child Study Team Evaluation. *Quinton Township Board of Education v. S.W.*, 94 N.J.A.R.2d (EDS) 130.

Petitioner's claim barred; settlement agreement. *J.L. v. Elizabeth Board of Education*, 94 N.J.A.R.2d (EDS) 119.

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.

Mother's changing her residence precluded entitlement to due process hearing challenging refusal to place son as tuition student. *N.A. v. Willingboro Board of Education*, 92 N.J.A.R.2d (EDS) 19.

## 6:28-2.8 Disciplinary action

(a) Pupils with educational disabilities are subject to the same district board of education discipline policies or procedures as nondisabled pupils, unless the pupil's individualized education program includes exemptions to those policies or procedures. The individualized education program shall be implemented in accordance with (b) through (h) below.

(b) Pupils with educational disabilities may be suspended for up to 10 consecutive or nonconsecutive school days without initiating action by the child study team.

(c) Prior to effecting any discipline which would result in a significant change in placement, the child study team shall conduct a reevaluation according to N.J.A.C. 6:28-3.7.

(d) The following standards shall be used to determine whether a proposed discipline constitutes a significant change in placement:

1. If the proposed discipline involves expulsion or suspension for an indefinite period of time or for more than 10 consecutive school days, the expulsion or suspension constitutes a significant change in placement.

2. If the proposed discipline involves suspension of more than 10 non-consecutive school days, the suspension shall be reviewed to determine if it creates a pattern of exclusion which constitutes a significant change in placement.

(e) When a pupil with an educational disability is suspended, the principal shall forward, at the time of suspension, written notification and a description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to suspension if this action would result in the pupil being excluded for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1. Determine if the suspension results in a significant change in placement;

2. Document the review and the determination made; and

3. If the suspension or expulsion would result in a significant change in placement, the case manager shall:

i. Immediately advise the principal that a reevaluation shall be conducted prior to the suspension; and

ii. Initiate a reevaluation.

(f) On completion of the reevaluation, the child study team shall determine if the pupil's behavior was primarily caused by his or her educational disability and, if so, whether the pupil's current educational placement is appropriate.

1. If the child study team determines that the pupil's behavior was primarily caused by the pupil's educational disability, the district may not suspend or expel the pupil. However, the child study team may propose a change in the pupil's placement.

2. If the child study team determines that the pupil's behavior was not primarily caused by his or her educational disability, the district may suspend or expel the pupil. However, at no time shall the district board of education cease educational services to that pupil.

(g) Upon making each of the determinations specified in (d), (e) and (f) above, the child study team shall prepare and forward to the principal and the parent(s) or adult pupil a written statement setting forth their conclusions and recommendations, if any, and a statement that mediation or a due process hearing may be requested according to N.J.A.C. 6:28-2.6 or 2.7.

(h) If there is ongoing peril of physical harm to self or others or of substantial disruption to the educational process, and the suspension would result in a significant change in placement, the pupil may be temporarily suspended while the district immediately seeks emergency relief.

Amended by R.1989 d.239, effective May 15, 1989.  
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Added new (d) prohibiting suspension for more than 10 school days unless emergency relief is granted.

Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a), "district board of education . . . policies"; replaced (a)1. and 2. with text regarding "individualized education program"; replaced text in (b) through (e) with new evaluation standards; added new (f) and redesignated old (f) as (g); deleted old (g).

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.1995 d.634, effective December 4, 1995.  
See: 27 N.J.R. 3263(a), 27 N.J.R. 4887(a).

#### Case Notes

Juvenile was not denied effective assistance of counsel in delinquency adjudication for serious offenses where evidence of guilt was overwhelming. *State in Interest of S.T.*, 233 N.J.Super. 598, 559 A.2d 861 (A.D.1989).

Teacher's petition to bring expulsion proceedings against student who assaulted her was dismissed where assault arose from student's handicap. *Barna v. Irvington Board of Education*, 96 N.J.A.R.2d (EDU) 598.

School board was entitled to emergency relief to continue student's suspension pending further hearing on the matter. *Brick Township Board of Education v. R.I.*, 96 N.J.A.R.2d (EDS) 107.

Student suspended for posing threat to others could not return without reevaluation. *Englewood Board v. C.M.*, 95 N.J.A.R.2d (EDS) 112.

Handicapped student's suspension upheld. *Deptford Township Board of Education v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Fight leading to disciplinary suspension not related to student's educational disability. *Deptford v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Expulsion; initial evaluation by child study team. *Edison Board of Education v. R.H.*, 94 N.J.A.R.2d (EDS) 35.

Disciplinary record required child study team evaluation over refusal of parents to give consent. *Ewing Township v. J.R.*, 93 N.J.A.R.2d (EDS) 94.

#### 6:28-2.9 Pupil records

(a) All pupil records shall be maintained according to N.J.A.C. 6:3-6.

(b) The parent(s), adult pupil or their designated representative shall be permitted to inspect and review the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-6 without unnecessary delay and before any meeting regarding the individualized education program.

(c) Any consent required for pupils with educational disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(a).

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

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

Old (b)1.-3. deleted pertaining to steps in appealing contents of records.

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

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

New (c) added referencing "consent" rules.

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.1994 d.127, effective April 4, 1994.

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

#### Case Notes

Due process hearing held to contest child study team's proposal to remove child from residential school into home and local school programs; determination of appropriate placement. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Federal due process requirements (citing former N.J.A.C. 6:28-1.9). *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

No parental right to pupil records under Right to Know Law absent governing regulations from State Board of Education (citing former N.J.A.C. 6:28-2.4). *Robinson v. Goodwin*, 1975 S.L.D. 6.

Local board policy to permit parental access to classification records only by way of oral, interpretive conferences proper exercise of board's discretion (citing former N.J.A.C. 6:28-1.3 and 2.4). *D.N. Sr. v. Bd. of Ed., Closter Boro., Bergen Cty.*, 1974 S.L.D. 1332.

2. Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the

pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

**6:28-2.10 Least restrictive environment**

(a) Each public agency of education shall ensure that:

1. To the maximum extent appropriate, a pupil with an educational disability is educated with children who are not educationally disabled;

2. Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

3. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

4. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

5. Placement of pupils with educational disabilities is provided in appropriate educational settings as close to home as possible;

6. Consideration is given to:

i. Whether the school district has made reasonable efforts to accommodate the child in a regular classroom with supplementary aids and services;

ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and

iii. The potentially beneficial or harmful effects which a placement may have on the pupil with educational disabilities or the other pupils in the class.

7. When the individualized education program does not describe specific restrictions, the pupil is educated in the school he or she would attend if not educationally disabled; and

8. To the maximum extent appropriate each pupil with an educational disability participates in regular classes, health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra-curricular activities.

New Rule, R.1989 d.239, effective May 15, 1989.

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

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 to comply with 34 CFR 300.550(b)(1), 300.553 and 300.512(c).

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.1994 d.334, effective July 5, 1994.

See: 26 N.J.R. 1422(a), 26 N.J.R. 2787(a).

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**

Failure to mainstream to maximum extent may not necessarily mean that school has discriminated on basis of handicap in violation of the Rehabilitation Act. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

Failure to meet burden of proving by preponderance of the evidence that child could not be educated in regular classroom. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

There is presumption in favor of placing child, in neighborhood school. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

Recommended placement in new public school program did not violate the Individuals with Disabilities Education Act. *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ.*, C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

School district improperly failed to consider less restrictive placements. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Violation of Individuals With Disabilities Education Act; failure to provide adequate supplementary aids and services to kindergarten student. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Behavior problems during kindergarten year were not basis for deciding to place child in segregated special education class. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

Individuals with Disabilities Education Act imposes obligations on school districts regarding placement of disabled children in regular classrooms. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

Placement in segregated, self-contained special education class was flawed Individualized Education Program. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

State board's guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void as improper rulemaking. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) affirmed as modified 105 N.J. 587, 523 A.2d 655 (1987).

Residential placement was ordered for classified student who had regressed in day placement. *J.M. v. Pemberton Borough Board of Education*, 96 N.J.A.R.2d (EDS) 163.

Residential placement was necessary to meet needs of trainable mentally retarded student. *R.H. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDS) 133.

Request for residential placement properly denied when disabled student's placement at day school conferred educational benefits in least restrictive environment. *P.G. v. Linwood Board of Education*, 96 N.J.A.R.2d (EDS) 99.

Requirement of score over 50 on standardized test for admission into eighth grade Spanish class was reasonable and not discriminatory. *M.R. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 31.

Mentally retarded child transferred from private out-of-state placement when appropriate alternate placement found in-state. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (DDD) 1.

Out-of-state placement found most appropriate for mentally retarded child until specialized day school and community residential placements can be arranged. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (EDS) 1.

Mainstreaming was more appropriate for educationally disabled child given nature and severity of her condition, needs and abilities, and school's response to those needs. *Union City Board v. D.M.*, 95 N.J.A.R.2d (EDS) 213.

Classification as emotionally disturbed and placement in self-contained setting were necessary. *Kittatinny Regional v. R.W.*, 95 N.J.A.R.2d (EDS) 181.

Placement of neurologically impaired child in district mainstream setting was more appropriate than unnecessarily restrictive placement out of district. *N.J. v. Carteret Board*, 95 N.J.A.R.2d (EDS) 137.

Student with academic and behavioral difficulties required placement in self-contained emotionally disturbed classroom. *Jersey City Board v. M.R.*, 95 N.J.A.R.2d (EDS) 114.

Epileptic student was not exempt from policy that teacher has discretion to determine whether episode of seizure warrants medical attention and was not exempt from policy that all medications taken by student during school day be administered by school nurse. *S.G. v. West Orange Board of Education*, 95 N.J.A.R.2d (EDS) 1.

Student with attention deficit hyperactivity disorder mainstreamed; second grade. *R.S. v. Mountain Lakes' Board of Education*, 94 N.J.A.R.2d (EDS) 201.

Student entitled to attend out-of-district school. *D.H. v. Scotch Plains-Fanwood Board of Education*, 94 N.J.A.R.2d (EDS) 175.

Abusive student with neurological impairment; home instruction. *East Brunswick Board of Education v. I.C.*, 94 N.J.A.R.2d (EDS) 151.

School district's placement of child classified as pre-school handicapped was inappropriate; least restrictive environment. *J.J.T. v. South Brunswick Board of Education*, 94 N.J.A.R.2d (EDS) 123.

Entitlement to an education in district; least restrictive environment. *K.D. v. Commercial Township Board of Education*, 94 N.J.A.R.2d (EDS) 82.

Violation of least restrictive environment requirement occurred with placement of disabled child in an out-of-district segregated handicapped educational setting. *M.T. v. Ocean City Board of Education*, 93 N.J.A.R.2d (EDS) 275.

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.

Inappropriate behaviors, indicating regression in present school environment, justified out-of-area residential placement. *T.M. v. Pleasantville*, 93 N.J.A.R.2d (EDS) 172.

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.

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.

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.

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.

## SUBCHAPTER 3. SERVICES

### 6:28-3.1 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who:

1. Shall evaluate, after parental consent for initial evaluation has been received, and participate in the determination of eligibility of pupils for special education and/or related services;
2. Shall coordinate the development, monitor and evaluate the effectiveness of the individualized education programs;
3. May deliver appropriate related services to pupils with educational disabilities;
4. May provide preventive and support services to nondisabled pupils;
5. May provide services to the general education staff regarding techniques, materials and programs for pupils experiencing difficulties in learning. Services include, but are not limited to, the following:
  - i. Consultation with school staff and parents; and
  - ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

(b) A child study team shall consist of a school psychologist, a learning disabilities teacher-consultant and a school social worker. For pupils ages three to five, the study team shall include a speech correctionist or speech-language specialist. All members of the child study team shall be employees of a district board of education, have an identifiable, apportioned commitment to the local school district and shall be available during the hours pupils are in attendance.

(c) The child study team shall act in consultation with a school physician when considering medical diagnostic services and with any other professional staff member(s) or consultant(s) deemed appropriate by the child study team, the parent(s) or the chief school administrator.

(d) At least one member of the child study team shall be knowledgeable about placement options for pupils with educational disabilities according to N.J.A.C. 6:28-4.

(e) One member of the child study team shall be designated as the case manager for each pupil with an educational disability.

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

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

New (d) added.

Administrative Correction to (a)1: changed "referral" to "initial evaluation".

See: 22 N.J.R. 3365(a).

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.1994 d.127, effective April 4, 1994.

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

**Law Review and Journal Commentaries**

Education—Administrative Law—Disabilities. Judith Nallin, 134 N.J.L.J. 70 (1993).

**Case Notes**

Modifying individualized educational program without consulting child study team was not improper. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

Child study team evaluation requested by one parent was not required for progressing student in joint custody after divorce when opposed by other parent. R.F. v. Saddle Brook Board, 95 N.J.A.R.2d (EDS) 187.

School district did not improperly abolish Child Study Team. Mullin v. Boonton Town Board of Education, 94 N.J.A.R.2d (EDU) 583.

Parent must allow child with reading disabilities to be evaluated by child study team. Board of Educ. of Voorhees Tp. v. S.W., 93 N.J.A.R.2d (EDS) 107.

A guidance counsellor is not automatically a member of the child study team, which consists of the school psychologist, social worker and a learning disabilities teacher-consultant (citing former N.J.A.C.

6:28-1.3). Childs v. Union Twp. Bd. of Ed., 3 N.J.A.R. 163 (1980), affirmed per curiam Dkt. No. A-3603-80 (App.Div.1982).

**6:28-3.2 Identification**

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be identified, located and evaluated through programs operated by or through contracts under the responsibility of the Department of Health according to P.L. 1992, c.155.

(b) These procedures shall include criteria to identify pupils who may be experiencing physical, sensory, emotional, communication, cognitive or social difficulties.

(c) The identification procedures shall provide for participation of instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.

(g) Evaluation by additional specialists may be required as listed in N.J.A.C. 6:28-3.5(d).

(h) The requirements for evaluation by the child study team do not apply to a pupil confined at home or to a hospital for 60 calendar days or less by a physician or to a pupil with a speech or language problem when the nature of that problem does not warrant a comprehensive evaluation by a child study team.

(i) If the reports and evaluations of other New Jersey public school district child study team members, Department of Education approved clinics or agencies, Educational Services Commissions or Jointure Commissions or professionals in private practice are accepted by members of the child study team, such acceptance shall be noted in writing and shall become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

(j) By June 30 of a pupil's last year in a program for the preschool handicapped, the child study team shall reevaluate and, if appropriate, classify according to N.J.A.C. 6:28-3.5.

Amended by R.1987 d.36, effective January 5, 1987.  
See: 18 N.J.R. 1771(a), 19 N.J.R. 76(a).

(j)4 added.

Amended by R.1989 d.239, effective May 15, 1989.  
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Old (c) deleted, remaining text recodified and requirement added at (d)5. regarding speech language assessment of three to five year olds.  
Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Revisions made to (a), (f) and (h).  
Amended by R.1992 d.280, effective July 6, 1992.  
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

At (d) expanded requirements regarding the use of functional and standardized tests in child study team evaluations; at (f) amended to comply with 34 CFR 300.543.

Amended by R.1994 d.127, effective April 4, 1994.  
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

#### Case Notes

Equal educational opportunity to institutionalized persons. *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

Poor academic performance and consistent misbehavior warranted comprehensive evaluation of child over parent's consent to determine value of special education classification. *Voorhees Township Board In Interest of S.H.*, 95 N.J.A.R.2d (EDS) 228.

Intervention in form of an evaluation by child study team was necessary for child with possible educational disability notwithstanding parent's lack of consent. *Parsippany-Troy Hills Board v. B.H.*, 95 N.J.A.R.2d (EDS) 225.

Child's possible educational disability warranted comprehensive evaluation by child study team despite parent's failure to appear. *Union Township Board v. T.K.J.*, 95 N.J.A.R.2d (EDS) 224.

Inappropriate, aggressive and hostile behavior necessitated an order permitting school district to test and evaluate child despite lack of consent from parents. *Jersey City Board v. T.W.*, 95 N.J.A.R.2d (EDS) 211.

Lack of parental consent did not preclude evaluation of failing student for special education services. *South Brunswick Board v. J.R.*, 95 N.J.A.R.2d (EDS) 161.

Parent could not further delay in arranging neurological examination for impaired child. *Upper Freehold Regional v. T.S.*, 95 N.J.A.R.2d (EDS) 123.

Student with serious educational and behavioral problems with sexual overtones required emergent relief to complete child study team evaluations. *Dumont Board v. G.C.*, 95 N.J.A.R.2d (EDS) 119.

Student with serious behavioral and educational problems required evaluation without parental consent. *Jersey City Board v. C.F.*, 95 N.J.A.R.2d (EDS) 113.

Evaluation was required of student over parents' refusal upon arrest for possession of weapon. *State Operated School v. H.J.*, 95 N.J.A.R.2d (EDS) 84.

Child's emotional and cognitive difficulties required evaluation over parents' refusal. *Ewing Township v. G.R.*, 95 N.J.A.R.2d (EDS) 75.

Parents' costs for untimely assessment of neurologically impaired child were reimbursable. *A.S. v. Teaneck Board*, 95 N.J.A.R.2d (EDS) 45.

Mother's cooperation in evaluation of child for placement in special education class was required. *School District v. M.B.*, 95 N.J.A.R.2d (EDS) 8.

Referral to child study team for evaluation as to placement in special education class was necessary for student with learning disability. *Board of Education v. T.W.*, 95 N.J.A.R.2d (EDS) 6.

Student with drug problem not permitted to matriculate; Child Study Team given opportunity to conduct evaluation. *P.F. v. North Hunterdon Board of Education*, 94 N.J.A.R.2d (EDS) 213.

School Board's implementation of Independent Education Program for child classified as mildly retarded was proper. *Caldwell-West Caldwell Board of Education v. M. B.* 94 N.J.A.R.2d (EDS) 93.

Placement of neurologically impaired 6th-grader back in all special education 5th-grade classes was unnecessary. *A.B. v. Westfield Board of Education*, 94 N.J.A.R.2d (EDS) 85.

Classification of child as multiply handicapped and placement of child in a special education program. *Orange Board of Education v. M.W.*, 94 N.J.A.R.2d (EDS) 18.

Child's poor school record and mother's failure to cooperate required evaluation without parental consent. *Caldwell-West Caldwell v. M.B.*, 93 N.J.A.R.2d (EDS) 230.

Disruptive and threatening behavior justified referral of student with suspect disability for evaluation. *State-Operated School District v. D.A.*, 93 N.J.A.R.2d (EDS) 151.

Student's continued poor progress required evaluation for handicap. *Marlboro v. A.P.*, 93 N.J.A.R.2d (EDS) 149.

Disciplinary record required child study team evaluation over refusal of parents to give consent. *Ewing Township v. J.R.*, 93 N.J.A.R.2d (EDS) 94.

Immediate evaluation of ten-year-old student ordered; student displayed educational deficiencies, poor behaviors and increased distractibility; complete absence of parental cooperation. *East Brunswick Board of Education v. K.P.*, 93 N.J.A.R.2d (EDS) 77.

Child study team evaluation ordered for illiterate former street urchin. *Middletown Township Board of Education v. H.L.*, 93 N.J.A.R.2d (EDS) 19.

Evaluation by child study team warranted for 10-year-old student exhibiting aggressive behavior. *Somerville Board of Education v. L.M.*, 92 N.J.A.R.2d (EDS) 255.

Eighth-grade student referred to child study team for evaluation and possible classification. *East Brunswick Board of Education v. K.L.*, 92 N.J.A.R.2d (EDS) 248.

Board authorized to evaluate student for purposes of determining special education needs; no parental cooperation. North Brunswick Board of Education v. S.S., 92 N.J.A.R.2d (EDS) 155.

Necessity of determining whether inappropriate classroom behavior was result of handicapped condition warranted completion of Child Study Team evaluation; parental opposition. Lodi Board of Education v. N.W., 92 N.J.A.R.2d (EDS) 108.

Record warranted order requiring evaluations of brother-and-sister twins. North Bergen Board of Education v. N.M. and A.M., 92 N.J.A.R.2d (EDS) 107.

Child Study Team evaluation was appropriate; absence of parental cooperation. Elizabeth Board of Education v. S.S., 92 N.J.A.R.2d (EDS) 103.

Student's inappropriate classroom behavior warranted Child Study Team evaluation to determine whether such behavior was result of handicapped condition. Lodi Board of Education v. N.W., 92 N.J.A.R.2d (EDS) 101.

Necessity for child study team evaluation demonstrated; absence of parental cooperation. Board of Education of Township of Bedminster v. J.T., 92 N.J.A.R.2d (EDS) 7.

Classification issues explained. R.D.H. v. Bd. of Ed., Flemington-Raritan Regional School District, Hunterdon Cty., 1975 S.L.D. 103, 1975 S.L.D. 111, 1976 S.L.D. 1161.

Classification and psychiatric evaluation. D.I. v. Neumann, 1974 S.L.D. 1006.

### 6:28-3.5 Determination of eligibility

(a) When an initial evaluation is completed, a meeting according to N.J.A.C. 6:28-2.3(h) shall be convened. The child study team shall attend. The purpose of the meeting shall be to:

1. Determine whether the pupil is eligible for special education and/or related services; and

2. If eligible, determine a single classification category as defined in (c) below.

- i. For pupils age five through 21, when a pupil's assessment data suggest multiple handicapping conditions but do not meet the criteria for the classification of multiply handicapped, the classification category that best describes the pupil's educational status and needs shall be assigned. Additional behavior or conditions and individual program and/or service needs shall be included in the individualized education program.

- ii. For pupils age three through five who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services, the classification of preschool handicapped shall be assigned.

(b) When a speech-language evaluation is completed, a meeting shall be held to determine eligibility for speech-language services. Participants in the meeting shall be the speech correctionist or speech-language specialist, the parent(s) and at least one of the following:

1. A teacher having knowledge of the pupil's educational performance;

2. Another speech correctionist or speech-language specialist; or

3. Other school personnel qualified to provide or supervise special education.

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. When the pupil has been classified as perceptually impaired according to (d)8ii below the summary shall include a statement of whether the pupil has a specific learning disability and the basis for making that determination. The summary shall include a statement that the perceptual impairment is not the result of environmental, cultural or economic disadvantage.

(d) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, a teacher having knowledge of the pupil's educational performance, parent(s) and, if they choose to participate, the school principal and staff members identifying the potentially educationally disabled pupil. Classification according to the following definitions shall be based on all evaluations conducted:

1. "Auditorily handicapped" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i and ii below. Evaluations by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech correctionist or speech-language specialist are required.

- i. The pupil is impaired in processing linguistic information through hearing, with or without amplification; and

- ii. The loss of hearing may be permanent or fluctuating and adversely affects the pupil's education.

2. "Autistic" means a pervasive developmental impairment characterized by (c)2i, ii, and iii below. An evaluation by a certified speech correctionist or speech-language specialist and an evaluation by a physician trained in neurodevelopmental assessment is required.

- i. Social-emotional and communication development impaired in ways that are not merely predictable from cognitive and/or sensory impairment(s);

- ii. Extreme aberrant responses to one or more aspects of the environment, such as insistence on sameness, resistance to change, stereotypic behaviors, lack of responsiveness to others or repetitive movements; and

- iii. Onset in infancy or childhood.

3. "Chronically ill" means a health condition such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorder or other medical disability which makes it impractical to receive adequate instruction through a regular school program. Evaluation by the school physician or his or her review and written acceptance of the medical report of another physician is required. The school nurse shall assist in the accumulation of the data necessary to determine eligibility.

4. "Communication handicapped" means impaired native speech or language which is outside the range of acceptable variation, adversely affects a pupil's educational performance and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by (d)4i or ii below. An evaluation by a certified speech correctionist or speech-language specialist is required.

i. "Communication handicapped" means a severe speech or language disorder which interferes with the ability to use oral language to communicate;

ii. "Eligible for speech-language services" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or speech-language specialist. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(h).

5. "Emotionally disturbed" means the exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance and shall be characterized by (d)5i or ii below. An evaluation by a psychiatrist experienced in working with children is required.

i. An inability to build or maintain satisfactory interpersonal relationships;

ii. Behaviors inappropriate to the circumstances, a general or pervasive mood of depression or the development of physical symptoms or irrational fears.

6. "Mentally retarded" means cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature being demonstrated in home, school and community settings, and characterized by one of the following:

i. "Educable" means a level of cognitive development and adaptive behavior in home, school and community settings that are moderately below age expectations with respect to all of the following:

- (1) The quality and rate of learning;
- (2) The use of symbols for the interpretation of information and the solution of problems;
- (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Trainable" means a level of cognitive development and adaptive behavior that is severely below age expectations with respect to all of the following:

(1) The ability to use symbols in the solution of problems of low complexity;

(2) The ability to function socially without direct and close supervision in home, school and community setting;

(3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

7. "Multiply handicapped" means the presence of two or more educationally disabling conditions which interact in such a manner that programs designed for the separate disabling conditions will not meet the pupil's educational needs. All evident educational disabilities shall be documented. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions which forms the basis for the classification of a pupil as "multiply handicapped." Evaluation by all specialists required in this subsection for the separate disabling conditions being considered for the determination of "multiply handicapped" are required.

8. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally disabling condition or environmental, cultural or economic disadvantage and is characterized by (d)8i or ii below.

i. "Neurologically impaired" means a specific impairment or dysfunction of the nervous system or traumatic brain injury which adversely affects the education of a pupil. An evaluation by a physician trained in neurodevelopmental assessment is required.

ii. "Perceptually impaired" means a specific learning disability manifested by a severe discrepancy between the pupil's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematic computation;
- (6) Mathematic reasoning; and

## (7) Written expression.

9. "Preschool handicapped" means those children age three through five who have an identified disabling condition and/or a measurable developmental impairment who require and would benefit from special education and related services.

10. "Orthopedically handicapped" means a condition which, because of malformation, malfunction or loss of bones, muscle or body tissue, necessitates special education and/or related services. An evaluation by a physician qualified to conduct an orthopedic evaluation is required.

11. "Socially maladjusted" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined in (d)5 above. If determined necessary by the child study team, an evaluation by a psychiatrist experienced in working with children is to be obtained.

12. "Visually handicapped" means an inability to see within normal limits as characterized by (d)12i or ii below. An evaluation by a specialist qualified to determine visual disability is required. Visually handicapped pupils eligible for special education and/or related services shall be reported to the Commission for the Blind and Visually Impaired.

i. "Blind" means a loss of acuity or field restriction so great that a pupil cannot rely on sight to learn.

ii. "Partially sighted" means a field restriction or loss of visual acuity which adversely affects a pupil's education, but which does not warrant classification of a pupil as "blind." A partially sighted pupil is able to use sight to learn.

Public Notice: The Superior Court, Appellate Division invalidated N.J.A.C. 6:28-3.5(d) and (e)8.

See: 17 N.J.R. 2464(b).

Amended by R.1987 d.36, effective January 5, 1987.

See: 18 N.J.R. 1771(a), 19 N.J.R. 76(a).

Deleted (d) and amended (e)8 and recodified (d)8 to comply with decision in *In re Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158 (App.Div. 1985)* invalidating former (d) and (e)8.

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

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

Added requirement at (a)2., i, ii that single classification must be made and at new (c) determination must be made collaboratively; changed references from "speech correction" to "speech language services".

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

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

Revised definitions of "chronically ill" and "eligible for day training".

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

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

Definition of "Autistic" added.

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

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

At new (b) at least three participants at eligible meetings in compliance with federal mandate; (c)8i added traumatic brain injury; (d)8ii amended to comply with 34 CFR 300.54 and 300.543.

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

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

## Case Notes

Recommended placement in new public school program did not violate the Individuals with Disabilities Education Act. *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.*

Recommended placement in preschool handicapped program satisfied requirement for an "appropriate" education. *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.*

Reimbursement to parents of private school expenses denied. *Wexler v. Westfield Bd. of Ed., 784 F.2d 176 (3rd Cir.1986), certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49 (1986).*

Juvenile's confession was not rendered inadmissible; police interrogation was not interpreted for Spanish-speaking guardian. *State in Interest of J.F., 286 N.J. Super. 89, 668 A.2d 426 (A.D.1995).*

Former N.J.A.C. 6:28-3.5(e)8 defining "pre-school handicapped" set aside as impermissibly narrowing statutory language and frustrating statutory policy. *In re: Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272 (App.Div.1985).*

Student previously classified as neurologically impaired would be reclassified as educable mentally retarded after her consistently low test scores were found not to be solely due to her hyperactivity and distractibility during test taking. *A.E. v. Jersey City Board of Education, 96 N.J.A.R.2d (EDS) 89.*

Student not eligible for special education services when no disability found to justify such services. *F.C. v. Palmyra Board of Education, 96 N.J.A.R.2d (EDS) 39.*

Multi-handicapped student was placed in private academy where placement in public high school would likely result in failure. *C.D. v. West Windsor-Plainsboro Board of Education, 96 N.J.A.R.2d (EDS) 22.*

Residential placement for handicapped child denied when current day placement provided fair and appropriate education and residential placement not made for education reasons. *B.L. v. Board of Education of the Borough of Berlin, 96 N.J.A.R.2d (EDS) 12.*

Poor academic performance and behavior necessitated child's classification, program and placement even though parent was inaccessible and unresponsive. *M.F. v. Piscataway Board, 95 N.J.A.R.2d (EDS) 206.*

Student whose behavior was due directly to heavy marijuana use was not eligible for special education services. *J.M. v. Freehold Township, 95 N.J.A.R.2d (EDS) 133.*

Discrepancy between academic performance and cognitive abilities did not warrant special education classification. *N.C. v. Englewood Board, 95 N.J.A.R.2d (EDS) 99.*

Emotionally disturbed student; special education. *South Orange-Maplewood Board of Education v. A.I., 94 N.J.A.R.2d (EDS) 168.*

Parents of rebellious student; no determination was made that student was educationally disabled. *B.B. v. Hillsborough Board of Education, 94 N.J.A.R.2d (EDS) 71.*

Placement in full-time residential educational facility was not warranted absent an adequate measurement of mentally disabled student's potential. *J.C. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 267.*

Costs of private schooling for handicapped child whose communication difficulty was mild were not reimbursable. *A.M. v. Board of Education, 93 N.J.A.R.2d (EDS) 133.*

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.

Student's asthma did not adversely affect him so as to prevent him from receiving adequate instruction in regular school program; not chronically ill. *Hopewell Valley Board of Education v. S.L.*, 92 N.J.A.R.2d (EDS) 91.

Chronically ill student not special education student entitled to related service of transportation. *R.F. v. Hackensack Board of Education*, 92 N.J.A.R.2d (EDS) 59.

Recovering anorexic was no longer "emotionally disturbed" or "chronically ill". *J.C. v. Elmwood Park Board of Education*, 92 N.J.A.R.2d (EDS) 25.

Ten-year-old student perceptually impaired; implementation of individualized educational program ordered. In *Matter of S.R.*, 92 N.J.A.R.2d (EDS) 4.

Vision and hearing difficulties did not render student classifiable as handicapped. *A.K. v. Clinton Town Board of Education*, 92 N.J.A.R.2d (EDS) 1.

Former regulations silent on reimbursement to parents. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Proper classification under former N.J.A.C. 6:28-1.2(g) of multiply handicapped pupil. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

New York resident's child, domiciled in New Jersey, not entitled to New Jersey free education. *V.R. v. Bd. of Ed., Hamburg Boro., Sussex Cty.*, 2 N.J.A.R. 283 (1980).

Expulsion for disorderly and disruptive behavior. *J.P. v. Bd. of Ed., Matawan-Aberdeen Regional School District*, 1979 S.L.D. 382, 1979 S.L.D. 389.

Treatment of mainstreaming concept under former N.J.A.C. 6:28-2.1. *O'Lexy v. Bd. of Ed., Deptford Twp., Gloucester Cty.*, 1972 S.L.D. 641.

### 6:28-3.6 Individualized education program

(a) The individualized education program shall be written upon completion of the child study team's evaluation according to the timelines in N.J.A.C. 6:28-2.1(c), and prior to the pupil's placement in a special education program.

(b) The individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend the meeting according to N.J.A.C. 6:28-2.3(h).

(c) When a pupil has been classified as eligible for speech-language services or the school physician has determined a pupil with an educational disability needs home instruction, the individualized education program meeting shall be as follows:

1. For pupils classified eligible for speech-language services, the meeting shall include the same participants as required by N.J.A.C. 6:28-3.5(b). When appropriate, the pupil shall attend the meeting.
2. Other certified school personnel and the principal or designee may participate in the meeting.

3. When a pupil with an educational disability has been determined by the school physician to need home instruction, a meeting shall be conducted to review and revise the individualized education program according to (j) below.

(d) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the individualized education program shall include, but not be limited to:

1. A statement of the pupil's eligibility for special education and/or related services;
2. A statement of current educational status, which describes the pupil's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;
3. A statement of annual goals which describes the educational performance expected to be achieved under the pupil's individualized education program. Annual goals shall be related to the special education and/or regular education curriculum;
4. A statement of objectives which describes specific measurable steps between the current educational status and the annual goals; and
5. A description of the pupil's educational program which includes:
  - i. A rationale for the type of educational program and placement selected;
  - ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs;
  - iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of a pupil with an educational disability in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the regular education program shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil;
  - iv. A description of exemptions from regular education program options including testing programs, core course proficiencies and State and local graduation requirements which includes a rationale for the exemptions;
  - v. Reasons why the individualized education program goals and objectives do not include the proficiencies measured by the High School Proficiency Test and the requirement to demonstrate mastery of curriculum

proficiencies for pupils exempted from these requirements;

vi. A statement of the alternate requirement for each exemption from State and local high school graduation requirements. The individualized education program shall identify which alternative requirements must be achieved by the pupil with an educational disability to qualify for the State endorsed diploma issued by the school district;

vii. For pupils with educational disabilities age 14 and over, or younger, if deemed appropriate, annual goals and objectives shall be related to the post/secondary outcomes. Transition services shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests and shall include:

- (1) Instruction;
- (2) Community experiences;
- (3) The development of employment and other post-school adult living objectives; and
- (4) If appropriate, acquisition of daily living skills and functional vocational evaluation.

viii. If the participants in the individualized education program meeting determine that transition services shall not be needed in one or more of the specified areas in (d)5vii(1) through (3) above, the individualized education program shall include a statement to that effect and the basis upon which the determination was made.

ix. A statement of and rationale for the length of time the pupil is expected to be in a special education program including the length of the school day and an extended academic year, when appropriate;

x. A statement specifying the language to be used for instruction, if other than English;

xi. A statement which describes the special education and/or related services, including the frequency and duration of services and the date when they will begin;

xii. A statement describing the roles of specific school personnel and their responsibilities for implementing the various aspects of the individualized education program;

xiii. The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met;

xiv. Any exemptions from local disciplinary policies and/or procedures;

xv. Any specialized equipment or materials;

xvi. Instructional strategies fitted to the pupil's learning style; and

xvii. Techniques and activities designed to support the personal and social development of the pupil.

(e) The individualized education program for the pupil classified as eligible for speech-language services shall include (d)1, 2, 3, 4, and 5i, ii, iii, x, xi, xiii, xv, and xvi above. When appropriate, (d)5vii, xii, and xvii shall be included. The statement of the current educational status in (d)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall identify the pupil with an educational disability to the child study team.

(f) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parent(s) or district board of education shall meet to review and revise the individualized education program and determine placement as specified in this subchapter.

1. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in a preschool program.

2. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in an elementary school program and shall include input from the staff of the secondary school.

(g) Signatures of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

(h) When the parent(s) declines participation in an individualized education program meeting or is in disagreement with the recommendations, the remaining participants shall develop a written individualized education program in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained or a due process hearing decision is issued. For other than initial implementation of special education, consent is not required. The parent(s) shall be provided written notice according to N.J.A.C. 6:28-2.3.

(i) During a 21 year old educationally disabled pupil's last year in an educational program, a meeting shall be held including the parent(s), the case manager, the pupil, if appropriate, and other individuals as appropriate to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended.

(j) School personnel, adult pupils and the parent(s) of a pupil with an educational disability shall be allowed to use an audio-tape recorder during the individualized education program meetings.

**6:28-3.7 Reevaluation**

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(d)1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5(d)2 shall be required.

2. Reevaluation shall be conducted according to N.J.A.C. 6:28-3.4(c) and (h). Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(d)1 through 6.

3. Reevaluation shall be conducted when a change in classification or significant change in placement is being considered.

4. When the reevaluation is completed those members of the district board of education child study team who have participated in the reevaluation shall attend a meeting according to N.J.A.C. 6:28-2.3(h) to determine eligibility and if the pupil remains eligible for special education and/or related services, the basic plan of the individualized education program shall be developed.

New Rule, R.1989 d.239, effective May 15, 1989.

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

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

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

Clarification that an IEP must be developed if a pupil is classified and who shall participate in IEP meetings following a pupil's reevaluation.

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

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

Added required assessments for autistic pupils.

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

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

Corrected internal cites.

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).

**Case Notes**

Parents do have right to question whether program in settlement agreement meets requirements of statute if there has been change in circumstances. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J. 1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d(EDS) 145.

Settlement agreement was unambiguous. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d(EDS) 145.

There was no significant change in student's placement; board of education was not obligated to secure new placement and develop new individualized education plan upon student's expulsion. Field v. Had-donfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. K.J. v. Runnemedede Board of Education, 95 N.J.A.R.2d (EDS) 257.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. B.C. v. Flemington-Raritan Board, 95 N.J.A.R.2d (EDS) 255.

Student suspended for posing threat to others could not return without reevaluation. Englewood Board v. C.M., 95 N.J.A.R.2d (EDS) 112.

Nosebleeds did not pose serious enough problem to warrant emergent relief in form of home instruction. Mount Laurel Board v. C.S., 95 N.J.A.R.2d (EDS) 110.

Student with aggressive behavior was withdrawn from school pending re-evaluation in order to protect fellow students. Brick Township v. P.M., 95 N.J.A.R.2d (EDS) 83.

Scores and assessments established need to change student's classification to multiply handicapped. L.R. v. North Plainfield, 95 N.J.A.R.2d (EDS) 72.

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.

Reevaluation of disabled child was proper. P.B. v. Wayne Board of Education, 94 N.J.A.R.2d (EDS) 69.

Reclassification of multiply handicapped child as eligible for day training was improper. A.V. v. Branchburg Board of Education, 94 N.J.A.R.2d (EDS) 62.

Returning child to mainstream school was appropriate. D.F. v. Carteret Board of Education, 94 N.J.A.R.2d (EDS) 19.

Returning child to mainstream school; child was no longer multiply handicapped. D.F. v. Carteret Board of Education, 94 N.J.A.R.2d (EDS) 19.

Classification of neurologically impaired student changed to emotionally disturbed. D.I. v. Teaneck, 93 N.J.A.R.2d (EDS) 237.

**6:28-3.8 Related services**

(a) Related services shall be provided to a pupil with an educational disability according to his or her individualized education program and may include one or more of the following:

1. Counseling services shall be provided in the following manner:

i. Counseling services for a pupil with an educational disability shall be provided within the public schools

during the school day by certified school psychologists, social workers or guidance counselors; and

ii. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.

2. Occupational and physical therapy shall be provided in the following manner:

i. Occupational and/or physical therapy shall be provided by educationally certified therapists; and

ii. A district board of education may contract with approved clinics and agencies for the provision of occupational and/or physical therapy.

3. Recreation shall be provided by certified school personnel.

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

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 descrip-

tion 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).

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).

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 neurological-

ly-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.

1. For the pupil placed in a vocational program outside of the local district, responsibility shall be as follows:

i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;

ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the individualized education program decisions; and

2. In vocational shop, and related academic programs class sizes shall be as follows:

i. For a class consisting of pupils with educational disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted. Approval shall be considered according to procedures specified by the Department of Education. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following pupil needs and instructional considerations:

- (1) Nature and degree of educationally disabling condition;
- (2) Interests, aptitudes and abilities of the pupil;
- (3) Functional level;
- (4) Employment potential;
- (5) Type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

(e) Secondary level pupils may be placed in vocational rehabilitation facilities according to the following:

1. Vocational rehabilitation facilities shall be approved by the New Jersey Department of Labor, the Division of Vocational Rehabilitation Services and the Department of Education, through its county offices, to provide vocational evaluation and work adjustment training only;

2. Placement shall be on a part-time basis. All other mandated instruction/services, as specified in the individualized education program shall be provided in an education program approved by the Department of Education; and

3. Placement in vocational rehabilitation facilities shall be made with prior written approval by the Department of Education through its county office.

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

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

Titled and recodified from N.J.A.C. 6:28-4.2(b)3. and 4.; maximum class size with aides established; criteria for placement in vocational rehabilitation facilities established.

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

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

Amended to expand the definition of secondary programs to include grade six and to clarify how services are to be provided in secondary special class programs.

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

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

Established special education class sizes for the autistic.

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).

#### Cross References

Graduation requirements, exemption of handicapped pupils, see N.J.A.C. 6:8-7.1(a)4.

#### 6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence for at least a two week period of time, home instruction shall meet the following criteria:

1. Instruction shall be provided at the pupil's place of confinement;

2. The pupil shall be carried on an individual home instruction register;

3. Instructional services shall begin within seven calendar days after eligibility has been established;

4. The teacher providing instruction shall be appropriately certified as teacher of the handicapped or for the subject or level in which the instruction is given;

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. Pupils with educational disabilities may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(d)5iv;

6. Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days. When instruction is provided by direct communication to a classroom program by telephones, computer or television, this instruction shall be in addition to the basic five hours of instruction; and

7. Instruction may be provided for up to 60 calendar days in a school year. If the school physician believes that instruction for a longer period of time is indicated, identification shall be made according to N.J.A.C. 6:28-3.2 for determination by the child study team of eligibility for special education and/or related services.

(b) A pupil classified as educationally disabled shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1. Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

2. Approval may be obtained for a maximum of 60 calendar days at which time renewal of the request may be made. Each renewal of the approval may be granted for a maximum of 60 calendar days.

3. Paragraphs (a)2, 3, 4 and 5 above shall apply to the home instruction program of pupils classified by the child study team.

4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a teacher on at least three separate days.

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution for at least a two week period of time and determined by the school physician to need home instruction or classified by the child study team as educationally disabled, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission, State-operated facility, jointure commission or approved clinic or agency at the pupil's place of confinement;

2. Paragraphs (a)2, 3, 4, 5 and 7 above shall apply to the home instruction program; and

3. Individualized instruction shall be provided through either:

i. One to one instruction according to (a)6 above;

ii. Instruction to small groups. The number of hours of instruction for the group shall be determined by multiplying the number of pupils in the group by five. The pupil to staff ratio shall not exceed the limit set by N.J.A.C. 6:28-4.4(a)6; or

iii. When instruction is provided by direct communication to a classroom program by telephone, computer or television, this instruction shall be in addition to (c)3i or ii above.

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

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a), 21 N.J.R. 2288(d).

Titled and recodified from N.J.A.C. 6:28-4.2(b)5. and 6.; minimum of 10 hours instruction per week for pupils confined to home and new criteria established for those confined to hospital, convalescent home or other medical institution.

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

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

Clarification of the exemption status of educationally handicapped pupils on home instruction and to allow the renewal of home instruction beyond maximum of 60 days.

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.1994 d.127, effective April 4, 1994.

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

#### Case Notes

Special education school's closure requires unprepared autistic student's home instruction under strict program until attainment of generalization. *J.S. v. High Bridge Board of Education*, 96 N.J.A.R.2d (EDS) 68.

Home instruction was not better for student than placement in self-contained class for pupils having emotional difficulties. *Hamilton Township v. J.C.*, 95 N.J.A.R.2d (EDS) 157.

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.

Nosebleeds did not pose serious enough problem to warrant emergency relief in form of home instruction. *Mount Laurel Board v. C.S.*, 95 N.J.A.R.2d (EDS) 110.

Placement of violent student in home study program pending results of child study team. *Oaklyn Bd. of Educ. v. C.G.*, 93 N.J.A.R.2d (EDS) 97.

Program designed and implemented by child study team was adequate; expenditures for outside tutoring not reimbursable. *S.A. v. Jackson Board of Education*, 92 N.J.A.R.2d (EDS) 256.

Gifted student with cerebral palsy was entitled to home instruction as interim placement. *J.M. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 249.

#### 6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1. Made only with prior written approval of the Department of Education through its county office;

2. For a period not to exceed one year;

3. Regarding class size or age range according to N.J.A.C. 6:28-4.4(a)4. An exception shall not be required regarding the provision of an extended academic year program.

(b) The county office shall:

1. Approve the exceptions incorporated in the pupil's individualized education program; or

2. Convene a meeting of the child study team and parent(s) to review the exceptions and individualized education program and to reach a consensus regarding the delivery of a free, appropriate public education. If it is determined that the granting of the exceptions would interfere with the delivery of a free, appropriate public education to the pupil, the county office may deny the exception.

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. 6:28-4.2(c) and expanded details of process by which county office grants exceptions.

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

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

Amended to clarify that an exception is not required regarding the provision of an extended year program.

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

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

#### 6:28-4.7 Transition

(a) Transition from an elementary program to the secondary program shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age. This determination shall be specified in the pupil's individualized education program according to N.J.A.C. 6:28-3.6.

(b) For pupils with educational disabilities age 14 and over, or younger, if determined appropriate, planning for transition to adulthood shall include the following:

1. The individualized education program shall be written in accordance with N.J.A.C. 6:28-3.6(d)5vii.

i. If an agency other than the district board of education fails to provide the transition services included in the pupil's individualized education program, the district board of education shall reconvene a meeting of the individualized education program participants. Alternative strategies to meet the pupil's transition objectives shall be identified.

2. Initial evaluation or reevaluation shall include assessment(s) to determine appropriate post-secondary outcomes;

3. The case manager shall be responsible for transition planning;

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate;

5. In addition to the required participants in an initial individualized education program meeting or an annual review meeting, the pupil with educational disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the individualized education program meeting. Notice of the meeting shall be provided to the participants according to N.J.A.C. 6:28-2.3(h)4;

6. If the pupil with educational disabilities does not attend the individualized education program meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the pupil's preferences and interests are considered; and

7. If an agency invited to send a representative to the individualized education program meeting does not do so, the district board of education or public agency shall take

other steps to obtain the participation of the other agency in the planning of any transition 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. 6:28-4.3.

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

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

New (b) added to address the transition of educationally handicapped pupils to adult life.

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

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

Amended to comply with Section 602(a)(19) of the I.D.E.A. which requires district boards of education to reconvene an IEP meeting if an outside agency fails to provide a transition service for a pupil with educational disabilities.

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

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

#### 6:28-4.8 Diplomas and graduation

(a) A pupil with educational disability who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program with the written approval of the chief school administrator. The individualized education program must specifically address these graduation requirements. The individualized education program shall specify which requirements would qualify the pupil with an educational disability for a State endorsed diploma issued by the school district responsible for his or her education.

(b) A pupil with an educational disability shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program has not included the range of proficiencies measured by the High School Proficiency Test and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.

(c) If a pupil attends a school other than that of the school district of residence which is empowered to grant a diploma, the pupil shall have the choice of receiving the diploma of the school attended or the diploma of the school district of residence.

(d) If a district board of education grants an elementary school diploma, a pupil with an educational disability who fulfills the requirements of his or her individualized education program shall qualify for a diploma.

(e) Pupils with educational disabilities meeting the standards for graduation according to this section, shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

Amended by R.1987 d.358, effective September 8, 1987.

See: 19 N.J.R. 1033(b), 19 N.J.R. 1641(c).

Added text to (b) "A handicapped pupil ... School Proficiency Test."

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. 6:28-4.4.  
Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to reinstate the requirement for written approval of the Chief School administrator for each exemption from the high school graduation requirements.

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

Special education student was properly denied graduation and senior privileges due to her poor attendance and failure to earn required number of academic credits. *A.S. v. Wayne Board of Education*, 96 N.J.A.R.2d (EDS) 162.

## SUBCHAPTER 5. APPROVED CLINICS AND AGENCIES

### 6:28-5.1 General requirements

(a) Clinics and agencies approved by the Department of Education may provide those contracted services to district boards of education delineated in this subchapter.

(b) In order to provide services to a district board of education according to these rules, clinics and agencies shall be approved annually by the Department of Education.

(c) Services which may be contracted shall be restricted to the following:

1. For public school pupils:
  - i. Independent child study team evaluations and/or child study team diagnostic services to supplement existing local district services;
  - ii. The related services of occupational therapy and physical therapy; and
  - iii. Home instruction.
2. For nonpublic school pupils:
  - i. Evaluation, determination of eligibility for special education and/or related services, classification and the development of an individualized education program;
  - ii. Supplementary instruction, speech correction and home instruction for pupils determined eligible for such services; and
  - iii. English as a second language according to N.J.A.C. 6:31-1.4 and compensatory education according to N.J.A.C. 6:8-1 for pupils eligible for such services.

3. Medical clinics and agencies approved by the New Jersey Department of Health or appropriate State agencies outside of New Jersey may conduct diagnostic medical services. These agencies do not have to obtain Department of Education approval nor do district boards of education have to receive prior approval of the Department of Education to purchase diagnostic medical services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from approved clinics and agencies with the prior written approval of the Department of Education through its county office according to the following:

1. A request for approval to purchase services shall include the proposed terms of the contract;
2. The district board of education shall be notified of approval or disapproval within 30 calendar days of the request; and
3. The approval shall be for one year.

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

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

Clarified "only" clinics and agencies approved by the Department can provide contracted services and added reference to "independent child study team evaluations . . ."

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

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

Amended to clarify that not only clinics and agencies may provide contracted services to districts.

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

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

Added home instruction to contracted services.

#### Case Notes

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation for the provision of auxiliary, diagnostic and therapeutic services to non-public school pupils, without seeking the review and approval of the State Board or the Commissioner. *Atty.Gen.F.O.1981, No. 1.*

Child study team evaluation and diagnostic services may supplement, but not supplant, existing local district services. *Elson v. Hudson County Area Vocational-Technical Schools*, 96 N.J.A.R.2d (EDU) 229.

### 6:28-5.2 Approval procedures

(a) Annual approval of clinics and agencies shall require, but not be limited to, submission and evaluation of the following:

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;

3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill;

i. All staff shall be appropriately certified or licensed;

ii. All educational certificates shall be recorded with the Department of Education through the county office in which the clinic or agency is located;

iii. Professional staff employed by a clinic or agency who work full time according to N.J.A.C. 6:3-1.13 for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment; and

iv. An employee of a district board of education shall not provide service as an employee of a clinic or agency to a pupil who is the responsibility of his or her employing district board of education;

4. A description of the facility or facilities in which services shall be provided including assurances that the facility meets applicable building and administrative code standards;

5. Fiscal information concerning the cost and method of payment for services;

6. Assurance of an adequate accounting system according to generally accepted accounting principles;

7. Assurance of a system for the collection, maintenance, confidentiality and access of pupil records which is according to N.J.A.C. 6:3-2; and

8. Assurance of the maintenance of a log, which includes but shall not be limited to, a list of services provided indicating the date, time, location and professional staff providing the service.

(b) Any clinic or agency denied approval by the Department of Education may appeal the annual approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6:24. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

Amended by R.1989 d.239, effective May 15, 1989.  
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference added making approval on annual procedure.  
Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to improve the monitoring of clinics and agencies.

## SUBCHAPTER 6. SERVICES IN NONPUBLIC SCHOOLS

### 6:28-6.1 General requirements for programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) The district of residence, as required by Federal law and regulation, shall maintain responsibility for providing a

free, appropriate public education for pupils enrolled in nonpublic schools.

(b) The district board of education in which the nonpublic school is located shall provide to nonpublic school pupils the programs and services required by this subchapter by itself, or through joint agreements with other district boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6:28-5.

(c) Specifications for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.

Amended by R.1985 d.209, effective May 6, 1985.  
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) added text: "located within the district."  
Amended by R.1989 d.239, effective May 15, 1989.  
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference to Statutory requirements and Federal law and regulation.  
Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

(a) deleted; amended to clarify the rule applies only to nonpublic school pupils placed under P.L. 1977, c.192 and c.193.

#### Case Notes

Necessity of electric shock treatment for developmentally disabled child established by clear and convincing evidence; other treatments had proven ineffective, child had caused much injury to herself, electric shock treatment through Self-Injurious Behavior Inhibiting System had decreased child's self-injurious behavior, risks inherent in use of SIBIS were low, and benefits outweighed risks. In re J.M., 292 N.J.Super. 225, 678 A.2d 751 (Ch.1996).

Student with learning disabilities was entitled to continuing placement in private school subsidized by local board of education during pendency of due process hearing. K.G. v. Haddonfield Board of Education, 96 N.J.A.R.2d (EDS) 103.

Reimbursement for private school costs denied when classified student's placement at public school would have afforded him opportunity to receive free and appropriate public education. R.W. v. Montgomery Township Board of Education, 96 N.J.A.R.2d (EDS) 78.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. K.J. v. Runnemede Board of Education, 95 N.J.A.R.2d (EDS) 257.

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.

Difficulties in auditory processing and visual perception of neurologically impaired child with Tourette's syndrome demonstrated acute need for placement in private school. E.J. v. Mansfield Board, 95 N.J.A.R.2d (EDS) 235.

Placement in class for neurologically impaired students at local school, rather than private school placement, was appropriate placement for classified student making cognitive and academic progress. J.J. v. Bound Brook Board, 95 N.J.A.R.2d (EDS) 230.

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.

School district was required to provide reimbursement for occupational therapy given neurologically impaired child to replace that which

she should have received while domiciled in school district. *G.K. v. Cherry Hill Board*, 95 N.J.A.R.2d (EDS) 197.

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.*

School district was required to pay for specialized educational program of domiciled child obliged to seek school with program outside district. *J.D. and K.D. v. Middletown Board of Education*, 95 N.J.A.R.2d (EDU) 154.

Tuition and transportation costs for out-of-district placement were reimbursable. *J.B. v. Hamilton Township*, 95 N.J.A.R.2d (EDS) 64.

Board liable for tuition and costs related to handicapped student's placement in private school. *J.E. v. Montgomery Township Board of Education*, 94 N.J.A.R.2d (EDS) 191.

Parents entitled to reimbursement for educationally disabled student's placement at private school. *M.P. v. Summit Board of Education*, 94 N.J.A.R.2d (EDS) 156.

Inappropriate behaviors, indicating regression in present school environment, justified out-of-area residential placement. *T.M. v. Pleasantville*. 93 N.J.A.R.2d (EDS) 172.

Costs for disabled child's out-of-state placement were shared by school districts in which divorced parents with joint custody were domiciled. *J.K. v. West Milford and Roxbury*, 93 N.J.A.R.2d (EDS) 145.

Costs of private schooling for handicapped child whose communication difficulty was mild were not reimbursable. *A.M. v. Board of Education*, 93 N.J.A.R.2d (EDS) 133.

Full cost, rather than costs on a pro-rata basis, was amount parents were to be reimbursed for private school tuition. *M.Y., a Minor Child v. Fair Lawn*, 93 N.J.A.R.2d (EDS) 91.

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

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.

Blind, multiply handicapped child with behavioral problems was shown to need 12-month residential placement. *L.P. v. Edison Board of Education*, 92 N.J.A.R.2d (EDS) 259.

Perceptually impaired student not provided with appropriate education; private school tuition reimbursement. *J.H. v. Bernardsville Board of Education*, 92 N.J.A.R.2d (EDS) 147.

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.

Parents not entitled to reimbursement for cost of sending fifth-grade student to private school. *M.R. v. Montville Board of Education*, 92 N.J.A.R.2d (EDS) 20.

Private schools required approval by Bureau of Special Education and Pupil Personnel under former N.J.A.C. 6:28-4.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation. *Atty.Gen.F.O.1981, No. 1.*

**6:28-6.2 Provision of programs and services provided under N.J.S.A. 18A:46-1 et seq. and 18A:46-19.1 et seq.**

(a) Identification, evaluation, determination of eligibility, development of individualized education programs and provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(b) English as a second language shall be provided according to N.J.A.C. 6:8-1.

(c) Compensatory education shall be provided according to N.J.A.C. 6:8-1.

(d) All programs and services required by this subchapter shall be provided only with parental consent.

(e) All procedural safeguards specified in N.J.A.C. 6:28-2 apply to nonpublic school pupils eligible for the services listed in (a) above.

(f) Personnel providing a program or service under this subchapter shall meet appropriate certification requirements. Personnel shall not be employed by the nonpublic school in which the pupil is enrolled with the exception of personnel providing the types of instruction listed in N.J.A.C. 6:28-5.1(c)2ii and iii.

(g) Programs and services for nonpublic school pupils shall be provided in facilities approved by the Department of Education through its county superintendent of schools according to N.J.S.A. 18A:46-5 and 18A:46-19.5.

(h) Public and nonpublic school pupils may be grouped for speech correction and the other instructional programs provided under this subchapter, when appropriate.

**Case Notes**

Action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential

school for neurologically impaired child, denied. M.B. Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ., 9 N.J.A.R. 179 (1985).

School board's failure to follow proper placement procedures deprived parents of free choice in making decision for non-public cost placement under former N.J.A.C. 6:28-4.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

#### 6:28-7.4 Responsibilities of district boards of education

(a) The educational program of an educationally disabled pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

1. For pupils placed in programs described in N.J.A.C. 6:28-7.1(a), representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

(b) The placement of a pupil with an educational disability in a program as described in N.J.A.C. 6:28-7.1(a) shall be made only with the prior written approval of the Department of Education through its county office. Providers of programs under this subchapter shall maintain documentation of this approval.

1. A district board of education shall seek approval to place a pupil with an educational disability in such a program only when it can assure that the individualized education program can be implemented in that setting.

2. Prior to placement in a program, a representative of the district board of education and, if possible, the parent(s) shall visit the school.

3. If a pupil with an educational disability has available a free, appropriate education offered by a district board of education and the parent(s) chooses to place the pupil in a private school, neither the State nor the district board of education shall be responsible for the cost of the private school placement.

4. When a district board of education is able to demonstrate to the Department of Education through its county office that the individualized education program of a pupil with an educational disability cannot be provided by a public program or private day school program, the pupil may be placed in an approved residential private school which shall be at no cost to the parent(s). The district board of education shall be responsible for special education costs, room and board.

5. Placement of a pupil with an educational disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education costs.

i. When the pupil has been placed by a public agency empowered to make such placement, the placement shall meet the individualized education program requirements of the pupil.

ii. The chief school administrator or his or her designee shall participate with the public agency in the placement decision if the district board of education is to be responsible for the special education costs.

(c) If the approval of a private school for the handicapped is removed, a district board of education having a pupil with an educational disability placed therein, shall immediately begin seeking an alternative, appropriate placement for that pupil.

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. 6:28-7.3, added (c) regarding alternative placement.

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.

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".

#### Law Review and Journal Commentaries

Education—Administrative Law—Disabilities. Judith Nallin, 134 N.J.L.J. 70 (1993).

#### Case Notes

Jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child, was in Department of Education. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Disputes regarding proper residential placement of developmentally disabled citizens should be processed as "tested cases" under Administrative Procedure Act (APA). Superior Court, Law Division did not have jurisdiction. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

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.

Proof; necessity that school district provide compensatory educational services for handicapped student beyond high-school level. *J.G. v. Freehold Regional School District*, 94 N.J.A.R.2d (EDS) 178.

#### 6:28-7.5 Provision of programs

(a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6:28-4 and to the pupil's individualized education program.

(b) Educational programs shall be open to observation at any time to the representatives of the sending district board of education and of the Department of Education.

(c) With prior written approval of the Department of Education, a school described in N.J.A.C. 6:28-7.1(a) may operate an extended academic year program.

(d) A provider of programs under this subchapter shall notify the Department of Education 90 calendar days prior to ceasing operation.

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. 6:28-7.4, added (d) 90 calendar day notice prior to ceasing operation.

#### 6:28-7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any pupil with an educational disability from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference according to N.J.A.C. 6:28-3.6(f) which shall include participation of appropriate personnel from the receiving school. Fifteen calendar days prior to termination or withdrawal written notice shall be given by the parent(s), the district board of education or the school providing the program to the other parties.

(b) A pupil with an educational disability shall receive a diploma if the requirements of N.J.A.C. 6:28-4.8 are met.

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. 6:28-7.5, added correct N.J.A.C. cites.

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.1994 d.127, effective April 4, 1994.

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

#### 6:28-7.7 Fiscal management

(a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual pupil placement approval.

(b) The district board of education shall establish a written contract for each educationally disabled pupil it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the pupil with an educational disability.

(c) Daily transportation costs shall be paid by the district board of education.

(d) Transportation for pupils in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6:78-1.3.

(e) All approved private schools for the handicapped shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6:20.

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. 6:28-7.6, deleted (e) and recodified (f) and extended submission of audit to November 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".

#### 6:28-7.8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-6 pertaining to pupil records. In addition:

1. All pupil records maintained by a provider under this subchapter shall be returned to the responsible district board of education when a pupil's program is terminated.

2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-6 shall be directed to the chief school administrator or his or her designee of the local school district having responsibility for the pupil with an educational disability.

3. The daily attendance record of all pupils in approved programs under this subchapter shall be maintained in registers provided by the Department of Education and made available to the district board of education upon request. Habitual tardiness or prolonged absences shall be reported to the chief school administrator of the local school district.

(b) Pupil progress reports shall be submitted at least three times a year or as stipulated in the contract.

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. 6:28-7.7.

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.1994 d.127, effective April 4, 1994.

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

#### 6:28-7.9 Monitoring and corrective action

(a) The Department of Education shall monitor approved private schools for the handicapped according to N.J.A.C. 6:28-9.1. On site monitoring shall be conducted at least every five years.

(b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited to:

1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated in such areas as staff certification, facilities approval, business services according to N.J.A.C. 6:20-4 or submission and/or implementation of the corrective action plan.

i. An approved private school which is issued a conditional approval status may not accept new pupils;

2. The Department of Education may refuse to grant annual approval when chronic or systemic noncompliance is demonstrated; and

3. The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the pupils is in danger.