

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (c)2, substituted "its" for "their" preceding "opinion".

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "September 5, 2006" for "October 6, 2003"; in (b)1, substituted "," for "and, in furtherance thereof, to:" at the end; recodified former (b)1i through (b)1iii as (b)2 through (b)4; recodified former (b)2 through (b)6 as (b)5 through (b)9; in the introductory paragraph of (c), inserted "education"; in (d)2, inserted "and qualified"; added (i).

Case Notes

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

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

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

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

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

School district's failure to include home programming as a related service for a 15-year-old child diagnosed with autistic spectrum disorder violated the statutory mandate that the child receive a free and appropriate public education since in order to function as an independent and productive member of society, the child had to achieve self-control over his maladaptive behaviors. Consequently, the district was ordered to fully reimburse the child's parents for all expenses of the home program and behavioral consultation services that they had incurred for the two past extended school years. *C.R. ex rel. T.R. v. New Milford Bd. of Educ.*, OAL Dkt. No. EDS 11434-07, 2008 N.J. AGN LEXIS 967, Final Decision (October 28, 2008).

Eighth grader with a specific learning disability was not entitled to special education services because she was well adjusted and overall performing at grade level and thus not "in need" of services within the meaning of the IDEA. *J.S. and M.S. ex rel. R.S. v. Bound Brook Borough Bd. of Educ.*, OAL Dkt. No. EDS 2021-08, 2008 N.J. AGN LEXIS 347, Final Decision (May 15, 2008).

School district's requirement that a diabetic high school student travel to the nurse's office to have his blood glucose levels monitored was discriminatory; without the flexibility to test on-the-spot, the student was experiencing a discrimination against time when he was away from the classroom, when he jeopardized his health and safety by walking to the nurse's office while already experiencing a low blood sugar, and by being deprived of in-class training to become self-sufficient and independent. *G.K. and H.K. ex rel. C.K. v. Bloomfield Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10165-06, 2008 N.J. AGN LEXIS 117, Final Decision (February 4, 2008).

Disabled 16-year-old student was entitled to compensatory education for the equivalent of two and one-half academic years, in addition to the summer program recommended by an expert witness, as well as the immediate implementation of specific recommendations made by the expert for services to the student, where the evidence demonstrated that the student did not receive a FAPE; the student's reading disability had

not been properly addressed by the district, and the student's IEP failed to comply with the requirements of IDEA. *K.R. and J.R. ex rel. N.R. v. Vineland City Bd. of Educ.*, OAL DKT. NO. EDS 2321-07, 2008 N.J. AGN LEXIS 22, Final Decision (January 22, 2008).

Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982), provides a two-part test to determine whether or not a child has been given a FAPE, which is mandated by the IDEA: (1) a determination has to be made whether or not procedural safeguards required by the IDEA have been complied with, and (2) a determination has to be made whether or not the IEP proposed by the local educational authority is appropriate and reasonably calculated to enable the child to receive educational benefits. *M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10762-06, 2007 N.J. AGN LEXIS 659, Final Decision (September 18, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith. *M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10762-06, 2007 N.J. AGN LEXIS 659, Final Decision (September 18, 2007).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. The least restrictive appropriate placement was at the EPIC school, in conjunction with the Ridgewood preschool with an EPIC shadow, and parents were entitled to reimbursement for their unilateral placement. *M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10762-06, 2007 N.J. AGN LEXIS 659, Final Decision (September 18, 2007).

Mere fact that parents disagreed with what occurred at an IEP meeting and with the IEP itself did not constitute a lack of cooperation but instead constituted the input of concerned parents, which the school district failed to appropriately and adequately address. *M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10762-06, 2007 N.J. AGN LEXIS 659, Final Decision (September 18, 2007).

Parents' request on behalf of their handicapped son for an exemption to the school district's dress code, which required uniforms, failed where the child's IEP was reasonably calculated to provide him with a FAPE. *J.R. and M.S. ex rel. S.S. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10208-06, 2006 N.J. AGN LEXIS 840, Final Decision (October 20, 2006).

Student with autistic spectrum disorder was not entitled to compensatory education for the six years parents contended he did not receive a FAPE; parents' contention that the district had low expectations for the student and was simply warehousing him, as evidenced by the failure to administer standardized testing, was rejected where it was determined that the student's functional ability and classroom performance, as testified to by his teachers, provided a sufficient barometer of his skills. *R.P. and V.P. ex rel. E.P. v. Ramsey Bd. of Educ.*, OAL DKT. NO. EDS 11682-04, 2006 N.J. AGN LEXIS 745, Final Decision (September 5, 2006), *aff'd*, 2008 U.S. Dist. LEXIS 70884 (D.N.J. Sept. 17, 2008) (unpublished opinion) (affirming denial of compensatory education because student was now a college student).

Placement of student in new school, which was located right next to a public high school, was appropriate notwithstanding mother's concern for student's physical safety; although student had been the victim of violence at the hands of children at a former school, the school district painted a clear picture not only of the safety and security measures it had in place to protect its students, but of the propriety of the placement with respect to the educational needs of the student. *M.D. ex rel. D.H. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 9481-05, 2005 N.J. AGN LEXIS 487, Final Decision (September 2, 2005).

School district failed to provide a visually impaired student with a free and appropriate public education by failing to provide him with dual

busing, which had previously been provided to him for an extended period of time, to the respective homes of his divorced mother and father due to a shared custody agreement. *C.R. ex rel. C.R. v. Bridgewater-Raritan Reg'l Bd. of Educ.*, OAL DKT. NO. EDS 10150-04, 2005 N.J. AGEN LEXIS 530, Final Decision (August 30, 2005).

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

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

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

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

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

Law Review and Journal Commentaries

Enforcing Administrative Law Special Education Decisions During the Appeal Process. Theodore A. Sussan, 222 N.J.L.J. 52 (2003).

Attorneys' fees and damages in special education cases. Candice Sang-Jasey and Linda D. Headley, 212 N.J.Law. 38 (Dec. 2001).

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

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

1. If a district board of education has on file with the Department of Education through the county office of education a plan consisting of policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect before December 3, 2004, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.

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

- i. The approved policies, procedures and programs submitted by a district board of education shall remain in effect until the county office approves such amendments as the district board of education deems necessary; or
- ii. If the provisions of the IDEA Amendments of 2004 or its regulations are amended, or there is a new

legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

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

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

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

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

4. Homeless students are located, identified and evaluated and provided special education and related services in accordance with the IDEA, including the appointment of a surrogate parent for unaccompanied homeless youths as defined in 42 U.S.C. §§11431 et seq.;

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

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

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

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

9. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6A:32;

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

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

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

13. All personnel serving students with disabilities are highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law;

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

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

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

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

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

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

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

15. Students with disabilities are included in all State-wide and districtwide assessment programs, with appropriate accommodations, where necessary;

16. Instructional materials will be provided to blind or print-disabled students in a timely manner, consistent with a plan developed by the district;

17. For students with disabilities who are potentially eligible to receive services from the Division of Developmental Disabilities in the Department of Human Services, the district will provide, pursuant to the Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services; and

18. When the school district utilizes electronic mail, parents are informed as to whether they may use electronic mail to submit requests to school officials regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education. If this is permitted, parents shall be informed of the procedures to access the electronic mail system.

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

(d) Annually, each district board of education shall describe, in accordance with instructions from the Department of Education, how it will use the funds under Part B of the IDEA during the next school year.

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

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

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

3. Any additional data reports as required by the Department of Education to comply with the IDEA (20

vices personnel as appropriate,” no authority exists for reimbursement of such providers. C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 8034-08, 2008 N.J. AGEN LEXIS 876, Final Decision (October 29, 2008).

IEP was inadequate where, among other things, the case manager admitted that she received absolutely no input from staff who had worked with the student during the school year nor did she attempt to retrieve that information, contrary to N.J.A.C. 6A:14-2.3(k)’s requirement that a teacher with knowledge of the student participate in the eligibility meeting and development of the student’s IEP. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents’ application for emergent, “stay-put” relief was not barred by the 15-day notice provision in N.J.A.C. 6A:14-2.3(h), which provides that a district board of education shall implement the proposed action unless the parents request mediation or a due process hearing within 15 days, because the parents never received proper *written* notice of the proposed change in placement, as required by N.J.A.C. 6A:14-2.3(h) and (g). R.B. and C.B. ex rel. A.B. v. Great Meadows Reg’l Bd. of Educ., OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents’ opportunity to participate in the formulation process and to develop an IEP which addressed their child’s unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff’d*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

School district committed numerous procedural errors where dual busing for a visually impaired student was abruptly halted; the only notice the parents received that dual busing was no longer going to be provided was from the transportation department, and there was no notification after an IEP meeting as to why this accommodation was not specified as a related service in the IEP. C.R. ex rel. C.R. v. Bridgewater-Raritan Reg’l Bd. of Educ., OAL DKT. NO. EDS 10150-04, 2005 N.J. AGEN LEXIS 530, Final Decision (August 30, 2005).

Graduation was “change of placement,” within the meaning of procedural protection of parents’ right to be consulted about their disabled children’s education. T.H. v. Princeton Regional Board Of Education, 2003 N.J. AGEN LEXIS 1643, (N.J. Adm.), NO. EDS 4087-03.

School board’s learning disability teacher-consultant and speech and language teacher, who were academically trained in the field of education, with an emphasis in special education, and who were certificated as teachers, could attend eligibility meeting for students classified for special education and related services, absent evidence that teachers were lacking in knowledge of general education program offered in board’s schools. A.D. and E.P., on Behalf of E.D.P., v. Montclair Board of Education, 2000 N.J. AGEN LEXIS 700, N.J. Adm., Nov 08, 2000, (NO. EDS 3612-00).

Attendance of mother’s representative at individualized education program (IEP) meetings involving student, his mother, and school’s child study team was not appropriate, where representative had compromised her effectiveness as an advocate on behalf of student by filing her lawsuit against child study team and its members individually. J.J.Y., v. Kenilworth Board of Education, 2000 , 2000 N.J. AGEN LEXIS 1328, N.J. Adm., Aug 11, 2000, (NO. EDS 5599-00).

Special education program approved for classified student despite lack of parental approval after mother failed to attend either of two scheduled conferences. Seaside Park Board of Education v. C.G., 96 N.J.A.R.2d (EDS) 257.

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).

6A:14-2.4 Native language

(a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly 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.

(b) If the native language is not a written language, the district board of education shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
2. That the parent understands the content of the notice; and
3. There is written documentation that the requirements of (b)1 and 2 above have been met.

Case Notes

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

6A:14-2.5 Protection in evaluation procedures

(a) In conducting an evaluation, each district board of education shall:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:
 - i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and
 - ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;
2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and
3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each district board of education shall ensure:

1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:

- i. Are selected and administered so as not to be racially or culturally discriminatory; and
- ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and

iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:

- i. Have been validated for the purpose(s) for which they are administered; and
- ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;

3. The student is assessed in all areas of suspected disability;

4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;

5. Tests are selected, administered and interpreted so that when a student 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. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability; and

7. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category.

(c) A parent may request an independent evaluation if there is disagreement with any assessment conducted as part of an initial evaluation or a reevaluation provided by a district board of education.

1. If a parent seeks an independent evaluation in an area not assessed as part of an initial evaluation or a reeval-

uation, the school district shall first have the opportunity to conduct the requested evaluation.

i. The school district shall determine within ten days of receipt of the request for an independent evaluation whether or not to conduct an evaluation pursuant to (c)1iii and iv below, and notify the parent of its determination.

ii. If the school district determines to conduct the evaluation, it shall notify the parent in writing and complete the evaluation within 45 calendar days of the date of the parent's request.

iii. If the school district determines not to conduct the evaluation first, it shall proceed in accordance with (c)2 below.

iv. After receipt of the school district's evaluation, or the expiration of the 45 calendar day period in which to complete the evaluation, the parent may then request an independent evaluation if the parent disagrees with the evaluation conducted by the school district.

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

i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)3 and 4 below. In addition, except as provided in (c)1 above, the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.

3. Any independent evaluation purchased at public expense shall:

i. Be conducted according to N.J.A.C. 6A:14-3.4; and

ii. Be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved under N.J.A.C. 6A:14-5, or private practitioner, who is appropriately certified and/or licensed, where a license is required.

4. An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).

5. Any independent evaluation submitted to the district, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.

6. If a parent requests an independent evaluation, the school district may ask the parent to explain why he or she objects to the school district's evaluation. However, the school district shall not require such an explanation and the school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district's evaluation.

7. For any independent evaluation, whether purchased at public or private expense, the school district shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.

8. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

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

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

In (b), added 1iii and 7; and rewrote (c).

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "an" for "the" in the introductory paragraph; rewrote (b)1ii and (b)6; rewrote (c).

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).

Amendment to state special education regulations governing assessment of students for transition services improperly removed such students' entitlement, under the Individuals with Disabilities Education Act (IDEA) and previous version of regulations, to outcome-oriented transition services including assessment of appropriate post-secondary outcomes, where removed portion of previous regulations, specifically addressing evaluation for post-secondary outcomes, was not redundant. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

School board took it upon itself to deny petitioner's request for an independent functional behavioral assessment at Board expense, rather than filing for a due process hearing as required by N.J.A.C. 6A:14-2.5(c); petitioner entitled to the assessment. *J.S. ex rel. A.S. v. Parsippany-Troy Hills Twp. Bd. of Educ.*, OAL Dkt. No. EDS 3783-08, 2008 N.J. AGEN LEXIS 368, Final Decision (June 10, 2008).

Petitioners' request for an independent neuro-psychological examination was denied because the school board was entitled to first complete the multiple assessments it had agreed to in connection with petitioners' previous due process petition. *C.S. v. Middletown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 729-08, 2008 N.J. AGEN LEXIS 296, Final Decision (April 14, 2008).

There was no basis to require a school district to provide an independent evaluation of a student at the district's own expense, after the district had already evaluated the student and determined that the student did not qualify for special education services; parents' contentions concerning a perceived discrepancy between the W-J III language arts scores and the NJASK score of "partially proficient" in language arts did not compel a different result. *Glen Ridge Bd. of Educ.*

v. J.D. and K.D. ex rel. C.D., OAL DKT. NO. EDS 03056-08, 2008 N.J. AGEN LEXIS 230, Final Decision (April 2, 2008).

Where parents requested and a school district agreed to independent evaluations of a student regarding placement, the administrative law judge decided that it was essential for the parties to arrange an agreed-upon IEP team meeting so that the IEP team could consider the independent evaluations as required by N.J.A.C. 6A:14-2.5(c), despite the fact that the parties had already come to an agreement concerning the placement of the student. P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ., OAL DKT. NO. EDS 10418-04, 2005 N.J. AGEN LEXIS 660, Final Decision (October 31, 2005).

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.

Law Review and Journal Commentaries

Expert Witnesses in Special Education Cases, Lawrence R. Jones, Joni Jones, 229 N.J.L.J. 54 (2004).

6A:14-2.6 Mediation

(a) Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 years when there is a disagreement regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education.

1. A request for mediation shall not be used to deny or delay the right to request a due process hearing.

2. Mediation may be agreed to by a parent and school district in place of the resolution meeting described in N.J.A.C. 6A:14-2.7.

(b) The district board of education may establish procedures that require a parent, who chooses not to use the mediation process, to meet with a State mediator to discuss the benefits of mediation. This meeting may take place by telephone or through the use of electronic conference equipment.

(c) Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of students with disabilities or with respect to the student that is the subject of the mediation.

(d) Mediation is available from the Department of Education at the State level through the Office of Special Education Programs. Mediation shall be provided as follows:

1. To initiate mediation through the Office of Special Education Programs, a written request shall be submitted to the State Director of the Office of Special Education Programs;

2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the student's name, student's address, student's date of birth, name of the school the student is attending the issue(s) in dispute and the relief sought;

3. A mediation conference consistent with New Jersey law and rules shall be scheduled within 15 calendar days after receipt of a written request and completed within 30 days of the date of the request. At the mediation conference, issues shall be discussed and options for resolution shall be explored;

4. The role of the mediator is to:

i. Facilitate communication between the parties in an impartial manner;

ii. Chair the meeting;

iii. Assist the parties in reaching an agreement, and, if an agreement is reached, the mediator shall prepare the document setting forth the agreement of the parties at the mediation conference;

iv. Assure that the agreement prepared by the mediator complies with Federal and State law and regulation;

v. When appropriate, adjourn the mediation to a date certain, but not more than 45 days from the date of the request for a mediation conference, at the request of the parties to obtain additional information or explore options; and

vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute;

5. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute;

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement which shall be prepared by the mediator at the mediation conference and signed by each party. Mediation agreements shall not address special education or related services for more than one school year. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation, including audio recording, shall be made;

7. Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings;

8. Prior to commencement of the mediation conference, the mediator may, at his or her discretion and upon request of a party, require that the parties sign a confidentiality pledge to ensure that all discussions that occur during the mediation remain confidential;

9. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation;

10. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7 as provided in 20 U.S.C. §1415(k) as amended and supplemented (see chapter Appendix A); and

11. Signed agreements resulting from mediation conducted according to this section are binding on the parties. If either party fails to comply with any provision of the agreement, either party may seek enforcement of the agreement in a court of appropriate jurisdiction. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement provisions addressing the student's program or services. The request shall be filed no later than the 90th calendar day from the date that the action set forth in the mediation agreement that is the subject of the enforcement request was required to have occurred or have been completed. A request for enforcement of a mediation agreement may be made by writing to the State Director of the Office of Special Education Programs, Department of Education. If there are multiple clauses in the agreement, the 90-day time frame to seek enforcement shall be measured separately for each clause, based on the date by which each is required by the agreement to occur. Upon receipt of this request, the Office of Special Education Programs shall make a determination regarding the implementation of the

agreement. If it is determined that the district has failed to implement the agreement or part of the agreement, the Office of Special Education Programs shall order the district to implement the agreement or part of the agreement, as appropriate. If any part of the mediation agreement is modified by subsequent accord of the parties, enforcement may not be sought with respect to that part of the agreement.

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

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

In (d)3, substituted "10" for "20" preceding "calendar days"; and added (d)10.

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (d)9, amended N.J.A.C. reference and substituted "Appendixes A and D" for "Appendix".

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (a); recodified former (b)1 as new (b); in (c), added "or with respect to the student that is the subject of the mediation" at the end; rewrote (d).

Case Notes

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.

Attorney fees incurred in mediation; compensability. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Attorney fees recoverable under IDEA after resolution of complaint through mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Parent could recover attorney fees recoverable following resolution of her special education complaint even though parent was allegedly to

blame for forcing mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Parent was "prevailing party" in mediation and entitled to award of attorney fees. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Use of expert was not "necessary" and court would award only \$100 of witness' \$500 fee. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Claim that aide at residential facility was educationally necessary was not the same as issue decided in first hearing concerning validity of settlement agreement; *res judicata* did not bar educational necessity claim. *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.

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.

Competition in track meets was not available to handicapped student without required certificate. *C.W. v. Southern Gloucester Board*, 95 N.J.A.R.2d (EDS) 155.

Residential school's requirement that one-to-one aide be provided handicapped student for student to remain in program did not entitle parents to reopen settlement agreement. *D.R. v. East Brunswick Board of Education*, 93 N.J.A.R.2d (EDS) 31.

Implementation ordered of Stipulation of Settlement providing for mainstreaming of emotionally handicapped student at public high school. *J.J. v. Atlantic City Board of Education*, 92 N.J.A.R.2d (EDS) 251.

6A:14-2.7 Due process hearings

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.

1. A request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:

- i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or
- ii. The district board of education withheld information that was required by law to be provided to the parent.

(b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

(c) A request for a due process hearing shall be made in writing to the State Director of the Office of Special Education Programs. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, the student's date of birth, the name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought and, in the case of a homeless child, available contact information for the child and the name of the school the child is attending.

(d) Except when a response is required to be filed by a district pursuant to (e) below, the party against whom a request for a due process hearing is directed shall, within 10 days of the filing of a request for a due process hearing, provide a written response specifically addressing the issue(s) raised in the request for a due process hearing to the party that requested the due process hearing.

(e) When a parent requests a due process hearing, or an expedited due process hearing (for disciplinary issues) and the district has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the district shall send a written response to the parent within 10 days of receiving the petition. The written response shall include:

1. An explanation of why the agency proposed or refused to take the action raised in the request for a due process hearing;
2. A description of other options that the IEP team considered and the reasons those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
4. A description of the factors that are relevant to the agency's proposal or refusal.

(f) A request for a due process hearing, or expedited due process hearing (for disciplinary issues) serves as notice to the respondent of the issues in the due process complaint. The respondent may assert that the notice does not meet the requirements of 20 U.S.C. §1415 and, therefore, the notice is not sufficient. The notice for a hearing will be considered sufficient unless the respondent notifies the Office of Special Education Programs and the complaining party (petitioner), in

writing, within 15 days of receipt of the request for a due process hearing.

1. The sufficiency challenge will be forwarded to the Office of Administrative Law (OAL) and within five days of receipt of the written objection, an administrative law judge will determine whether the notice meets the requirements of 20 U.S.C. §1415 and will notify the parties in writing of the determination.

2. If the notice is determined sufficient, the timelines for resolution activities and for conducting a due process hearing will continue. If the notice is deemed insufficient, the administrative law judge may dismiss the case and the petitioner may re-file with the Office of Special Education Programs, or the administrative law judge may grant permission to amend the request.

i. If the case is dismissed and the petitioner files a new request for a due process hearing, all applicable timeframes and procedures set forth in these rules shall commence anew.

ii. If the administrative law judge allows the petitioner to amend the request for a due process hearing as part of a sufficiency challenge, the applicable timeframes and procedures shall commence to run from the time of the administrative law judge's determination.

(g) When the Office of Special Education Programs receives a request for a due process hearing, the matter shall be processed and, as appropriate, mediation and a due process hearing in accordance with these rules will be made available to the parties.

(h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity to resolve the matter before proceeding to a due process hearing in a resolution meeting. The school district must conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.

1. The resolution meeting shall include a representative of the school district who has authority to make decisions on behalf of the school district.

i. The school district shall not include its attorney unless the parent is accompanied by an attorney.

ii. An advocate shall not be considered an attorney for purposes of determining whether a school district shall be entitled to bring its attorney to a resolution meeting.

2. For a due process hearing, the resolution meeting shall be held within 15 days of receiving the parents' request. For an expedited due process hearing, the resolution meeting shall be held within seven days of receiving the request.

3. The resolution meeting shall not be audio or video recorded by either party unless both the district board of education and the parent agree to record the resolution meeting.

4. If a request for a due process hearing is not resolved to the satisfaction of the parents within 30 days of the receipt of the petition, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for a due process hearing.

5. If an expedited due process hearing request is not resolved to the satisfaction of the parents within 15 days of receipt of the request, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for an expedited due process hearing.

6. If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.

i. Either party may void the agreement, in writing, within three business days of signing the agreement.

ii. If the agreement is not voided within the three business days, it is legally binding.

iii. If either party fails to implement the written agreement, it is enforceable in any State court of competent jurisdiction or in the United States District court.

iv. If a dispute arises over the voiding of a resolution meeting agreement, the matter shall be transmitted to the Office of Administrative Law for a due process hearing.

7. If the requirements of this subsection with respect to scheduling and conducting a resolution meeting are not adhered to, issues concerning adherence to such procedures shall be raised in a due process hearing, and shall not be raised in a request for a complaint investigation pursuant to N.J.A.C. 6A:14-9.2.

8. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the office of special education programs in accordance with N.J.A.C. 6A:14-2.6.

i. Parents shall indicate on their request for a due process hearing whether mediation is also requested.

ii. If the district agrees to mediation in lieu of a resolution meeting, a representative of the district shall contact the Office of Special Education Programs to facilitate the scheduling of the mediation conference.

iii. If the parties fail to participate in mediation within 30 days of the date the request for a due process hearing is submitted, the matter shall be transmitted to the Office of Administrative Law for a due process hearing with a notation that the parties declined a resolution meeting and requested mediation, but that the mediation conference failed to occur.

of the parties, enforcement may not be sought with respect to that part of the decision.

(u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. §1415(k)4 as amended and supplemented. (See chapter Appendix A.)

1. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings.

(v) Any party may appeal the decision of an administrative law judge in a due process hearing.

1. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance the final decision. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergency relief or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitations period for filing appeals, and are instead subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.

(w) Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:

1. There shall be no resolution period or opportunity for a resolution meeting pursuant to (h) above with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and

2. The provisions of (d), (e) and (f) above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

Amended by R.1998 d.527, effective November 2, 1998.

See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

Rewrote (d)3ii.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), changed N.J.A.C. reference.

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

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

Rewrote the section.

Amended by R.2002 d.79, effective March 18, 2002.

See: 33 N.J.R. 3715(a), 34 N.J.R. 1265(a).

In (b), inserted "or a" preceding "reevaluation", and deleted "implement an initial IEP" preceding "or to release".

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a), substituted "Appendixes A and D" for "Appendix" in the third sentence, and amended N.J.A.C. reference at the end.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

Case Notes

Administrative exhaustion is required before a district court can provide review under 20 U.S.C. § 1415(e)(2) of a school district's determination that a student's misbehavior and misconduct is not a manifestation of his disability: (1) a manifestation determination is most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provide a mechanism for obtaining administrative review of a manifestation determination; and (3) the development of the record, through the administrative review process, is necessary for a court to determine whether or not an alleged manifestation determination error has been made, whether the student's federal rights have been violated as a result of that error, and whether the student is entitled to damages. *Gutin v. Wash. Twp. Bd. of Educ.*, 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

District court could not review, pursuant to 20 U.S.C. § 1415(e)(2), a school district's determination that a student's use of drugs was not a manifestation of his Attention Deficit Disorder (ADD) because the student's parents had not exhausted their administrative remedies by filing an administrative appeal challenging that determination: (1) a manifestation determination was most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provided a mechanism for administratively appealing manifestation determinations; and (3) requiring exhaustion of administrative remedies with regard to claims based on alleged manifestation determination errors was appropriate because, to award damages for such an alleged error, a court would necessarily have to decide whether the behavior at issue was a manifestation of the student's disability, and the use of the administrative process would help develop the record and establish whether or not a violation of federal law had occurred. *Gutin v. Wash. Twp. Bd. of Educ.*, 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

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.

Authorizing the Office of Special Education Programs to issue the final decision in complaint investigations under N.J.A.C. 6A:14-9.2 is consistent with the overall scheme of resolving individual complaints under the Individuals with Disabilities Education Act; even when a parent or school district receives a due process hearing under N.J.A.C. 6A:14-2.7, the Commissioner of Education does not issue the final administrative decision. *Board of Educ. of the Lenape Reg'l High Sch.*

Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Forty-five day deadline provided in state special education regulations for expedited hearings in disciplinary matters upon the request of a parent was not arbitrary, capricious, or unreasonable, despite fact that deadline for non-expedited hearings was also 45 days; deadline for expedited hearings allowed for no exceptions or extensions, providing for final decision within the accelerated time frame. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

State special education regulations requiring parent seeking emergency relief as part of expedited hearing in connection with student disciplinary matter to demonstrate entitlement to emergency relief did not violate provision of the Individuals with Disabilities Education Act (IDEA) requiring state educational agency (SEA) and local educational agency (LEA) to arrange for expedited hearing upon a parent's request, where emergency relief process and expedited hearing process were separate and were not redundant, and where request for emergency relief did not slow expedited hearing process. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Although L. 2007, c. 331 (N.J.S.A. 18A:46-1.1) places the burden of proof and burden of production in a due process hearing on the school district, petitioners requested a due process hearing on September 11, 2007, prior to the January 13, 2008 effective date of the act; thus, petitioners were subject to the default rule of *Schaffer v. Weast*, 546 U.S. 49 (2005), which placed the burden of proof on the party seeking relief. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Program developed by a district for its multiply disabled students at the district's high school would provide an autistic student with a free, appropriate education and the transition from an out-of-district private school that the student had been attending before his parents moved to the district would not have any adverse effects. With the encouragement of his parents, the student would be able to make a successful transition into that program. *D.P. ex rel. D.P. v. Central Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 4543-08, 2008 N.J. AGEN LEXIS 990, Final Decision (December 3, 2008).

Due process petition dismissed for parent's failure to participate in resolution session (20 U.S.C.A. 1415(f)(1)(B); N.J.A.C. 6A:14-2.7(h)); on the advice of his attorney, parent attended the session without the attorney and did not answer questions or discuss the issues. *J.N. ex rel. M.N. v. Lenape Reg'l High School Dist. Bd. of Educ.*, OAL Dkt. No.

EDS 4110-08, 2008 N.J. AGEN LEXIS 406, Final Decision (June 26, 2008).

Emergency relief granted, amending IEP to supplement a student's Extended School Year (ESY) program by the district providing transportation to Camp Shriver, a no-charge Special Olympics program; student would suffer irreparable harm if she did not attend the program because she would regress in the area of social skills. Parent's request to incorporate social skills training in the district's four-hour ESY program, however, was denied. *S.P. ex rel. M.P. v. East Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4718-08, 2008 N.J. AGEN LEXIS 374 (June 24, 2008).

Emergency relief granted to allow student to participate in June 2008 high school graduation exercises, where the school board violated the student's IEP by advising him to make up his failed junior year English course at a community college without providing any supports and the student failed the community college course. Student's IEP had to be amended to provide an opportunity to make up the course, and thus *Alicia's Law*, N.J.S.A. 18A:7C-5.2, was applicable. School board's request to call out the student's name separately at the graduation ceremonies was denied. *K.R. and L.R. ex rel. B.R. v. Lawrence Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4688-08, 2008 N.J. AGEN LEXIS, Final Decision (June 17, 2008).

Emergent relief was denied to allow a 20-year-old high school student, suffering from cerebral palsy, who had completed the requirements for graduation from high school, to continue for a third twelfth grade year in high school, where parents alleged that student was not emotionally and/or academically ready for life beyond high school. There were genuine issues of material fact and in the law and it could not be said that, after the case was fully heard, it was probable that the parents would prevail on the merits of their claim. *J.K. ex rel. G.K. v. Moorestown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4388-08, 2008 N.J. AGEN LEXIS 896, Emergent Relief Decision (May 30, 2008).

"Stay put" section of the Individuals with Disabilities Education Act, 20 U.S.C.A. 1415(j), is unequivocal in that it states plainly that the child shall remain in the then current educational placement until the completion of the due process proceeding, and it overrides the emergent relief factors in N.J.A.C. 6A:14-2.7. The federal statute "functions, in essence, as an automatic preliminary injunction," substituting "an absolute rule in favor of the status quo for a tribunal's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of the hardships." *D.C. ex rel. J.C. v. Glen Rock Bd. of Educ.*, OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Even if N.J.A.C. 6A:14-2.7 applied, parents' petition for emergent relief seeking a temporary residential placement for their 16-year-old son at an out-of-district school would be denied where it did not appear that the legal right underlying the parents' claim was settled or that the parents had a substantial likelihood of success; cases cited by the district brought into question a district's responsibility to provide a residential placement where the need for that level of structure is attributable, not to the attainment of meaningful educational benefit, but rather to a mental health problem and where the parents are having difficulty in supervising the child at home. *D.C. ex rel. J.C. v. Glen Rock Bd. of Educ.*, OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Once a child is enrolled in a charter school, the charter school becomes responsible for the educational program the child is to receive. When the charter school child study team, in cooperation with the parents, determines that a child shall attend an out-of-district private special education facility in order to receive the program determined to be appropriate to his needs, the resident board of education is not entitled to a due process hearing to challenge that placement. The resident board of education's challenge under N.J.S.A. 18A:36A-11 is to be made by filing an appeal before the Commissioner of Education under N.J.S.A. 18A:6-9. *Garfield Bd. of Educ. v. T.C. ex rel. J.C.*, OAL Dkt. No. EDS 3508-08, 2008 N.J. AGEN LEXIS 894, Final Decision (May 7, 2008).

Due process complaint dismissed, without prejudice, for failure of the parent to participate in the mandatory resolution session. T.H. ex rel. S.H. v. Summit City Bd. of Educ., OAL Dkt. No. EDS 03941-08, 2008 N.J. AGEN LEXIS 348, Final Decision (April 9, 2008).

Mother's request for emergent relief was denied for a stay-put order to prevent implementation of IEP by the N.J. Department of Children and Families for 21-year-old Pennsylvania resident with autism and schizo effective disorder, who was involuntarily committed while visiting her father in New Jersey. Previous placements were not viable, and the law does not support the imposition of a stay-put in interstate student transfer situations. P.C. ex rel. G.C. v. N.J. Dep't of Children & Families, OAL DKT. NO. EDS 3579-08, 2008 N.J. AGEN LEXIS 203, Emergent Relief Decision (March 26, 2008).

Claims dismissed because parent refused and/or failed to participate in resolution meeting, thereby frustrating and obstructing the process. J.T. and L.T. ex rel. G.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 903-08, 2008 N.J. AGEN LEXIS 229, Final Decision (March 26, 2008).

Emergency home instruction for not more than 45 calendar days was ordered where a student with an IEP assaulted his teacher and had previously assaulted her and other children, requiring that he be physically restrained on four separate occasions, and his parents and the school district could not agree on placement. Ridgewood Village Bd. of Educ. v. J.R. and K.R. ex rel. J.R., OAL DKT. NO. EDS 1627-08, 2008 N.J. AGEN LEXIS 65, Emergent Relief Decision (February 7, 2008).

Emergency relief was denied where parents failed to demonstrate that school officials acted in an arbitrary, capricious, unreasonable, or unlawful manner by not granting credit to high school student in four major subjects because she did not attend classes regularly and otherwise missed significant instructional time; nor was it shown that school officials acted unreasonably in offering the student the opportunity to earn academic credit by taking subject matter examinations. M.N. and B.N. ex rel. M.N. v. Hanover Park Reg'l High Bd. of Educ., OAL DKT. NO. EDS 11436-07, 2007 N.J. AGEN LEXIS 803, Final Decision (December 13, 2007).

Clerical error that referred to the student as a sixth grader was insufficient reason to consider placement in the sixth grade, when the student had yet to successfully complete the fifth grade. Z.I. ex rel. R.I. v. Irvington Twp. Bd. of Educ., OAL DKT. NO. EDS 11605-07, 2007 N.J. AGEN LEXIS 804, Final Decision (December 11, 2007).

Parent's request for emergency relief for temporary placement of child at a different school than the one she had been attending, pending the disposition of her due process petition, was denied; the "stay-put" provision of the IDEA (20 U.S.C.A. 1415) required that the child remain in her current placement at the early childhood learning school until all issues of the due process petition were resolved. The stay-put provision of the IDEA is an absolute rule in favor of the status quo, overriding discretionary consideration of the emergent relief factors in N.J.A.C. 6A:14-2.7(s), such as irreparable harm and likelihood of success on the merits. E.S. ex re. J.S. v. Union Twp. Bd. of Educ., OAL DKT. NO. EDS 11355-07, 2007 N.J. AGEN LEXIS 744, Emergent Relief Decision (November 1, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied where request did not involve one of the issues enumerated in 6A:14-2.7(r). There was nothing in the record to reflect that a one-on-one aide had been previously provided and was no longer provided; on the contrary, the record was clear that the child was in a self-contained classroom in which there were a teacher and two aides during the past year. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Applicant must meet all four prongs of the test set out in N.J.A.C. 6A:14-2.7 in order to prevail on an application for emergent relief. The first prong of the test is mandatory, i.e., the use of the word "will" indicates that there must be a high degree of certainty, not just a

possibility, that irreparable harm will occur. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied because although child's doctor did indicate that an aide was appropriate, he failed to specify that a one-on-one aide was required nor was it clear that he was presented with a description of the accommodations which the district had indicated it would be making. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Parents' petition for a due process hearing regarding their disabled child was dismissed where the parents failed to attend a resolution meeting and cancelled the mediation that was scheduled between the parties. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

N.J.A.C. 6A:14-2.7(h) is consistent with New Jersey's public policy strongly favoring settlement of claims; settlements permit parties to resolve disputes on mutually acceptable terms rather than exposing themselves to the uncertainties of litigation. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

Parent's claim against a board of education seeking legal and learning consultant fees was dismissed because administrative law judges do not have authority to grant claims for attorney fees or expert fees in special education cases. W.Z. ex rel. G.Z. v. Princeton Reg'l Bd. of Educ., OAL DKT. NO. EDS 2563-07, 2007 N.J. AGEN LEXIS 227, Final Decision (April 26, 2007).

Parents' petition for due process dismissed for failure to participate in resolution meeting. R.W. and A.W. ex rel. A.W. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2378-07, 2007 N.J. AGEN LEXIS 226, Final Decision (April 24, 2007).

Stay-put relief granted to continue student's one-on-one aide during at least 61% of his school day until the completion of due process in the matter. Under IDEA's stay-put provision, the intent is to maintain some stability and continuity in placement while actual placement is being determined. D.W. ex rel. S.W. v. Commercial Twp. Bd. of Educ., OAL DKT. NO. EDS 276-07, 2007 N.J. AGEN LEXIS 35, Final Decision (January 25, 2007).

Parents were not entitled to an emergency "stay put" order to keep their child in an out-of-district high school, as school districts are not required to continue to provide services to a student from another district where no contractual relationship between the two districts ever existed that could be construed to require the foreign district to provide FAPE. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Emergency relief for special education student denied. C.Y. v. Deerfield Township Board of Education, 97 N.J.A.R.2d (EDS) 59.

No change may be made in placement of handicapped pre-schooler without concurrence of both parties. C.W. v. Bernards Township Board of Education, 96 N.J.A.R.2d (EDS) 359.

District failed to show emergency which would justify summary declassification of pupil currently classified as perceptually impaired. Southern Gloucester Regional School District v. C.W., 96 N.J.A.R.2d (EDS) 357.

State-operated school offering special education was not proper party in due process hearing regarding implementation of individualized education program (IEP). A.B. v. Jersey City Board of Education and Office of Education, 96 N.J.A.R.2d (EDS) 295.

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.

Law Review and Journal Commentaries

Stay-Put Provision and Its Implications to Practitioners. George M. Holland, 222 N.J. Lawyer 35 (2003).

6A:14-2.8 Discipline/suspension/expulsions

(a) For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.

2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

(b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

(c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:

1. The removal is for more than 10 consecutive school days; or

2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.

(d) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. §1415(k), as amended and supplemented. (See chapter Appendix A.) However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

(e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

1. When it is determined that a series of short-term removals is not a change of placement, school officials, in consultation with the student's special education teacher and case manager shall determine the extent to which services are necessary to enable the student to progress

4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

Amended by R.2000 d.230, effective June 5, 2000.
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (a), inserted a reference to early childhood programs; and rewrote (b).

Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a) and (b), substituted "students with disabilities" for "the disabled"; in (b), inserted "for placements in unapproved schools" in the last sentence; in (c)3, updated the N.J.A.C. reference; in (d), rewrote the introductory paragraph.

Case Notes

Neither New Jersey statute precluding local educational agency's (LEA's) placement of disabled student in sectarian school, nor its implementing regulations, apply to unilateral parental placements, for purpose of determining whether such placements are reimbursable if LEA is found to have failed to provide free and appropriate public education (FAPE) required under IDEA. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq. L.M., a minor child, by his parents, H.M. and E.M. v. Evesham Township Board of Education, 256 F.Supp.2d 290.

Parents' claim for tuition reimbursement for their unilateral placement of sixth grade student out-of-district was denied because the ALJ found that the district's proposed IEP appropriately addressed the student's significant weaknesses in social interaction and pragmatic language and continued the successful program used in fifth grade. E.S. and J.S. ex rel. H.S. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 8569-07, 2008 N.J. AGEN LEXIS 377, Final Decision (June 6, 2008).

Parents were entitled to reimbursement for their unilateral out-of-district placement of fifth-grade multiply disabled student at the Orchard Friends School because the program offered by the school district was not appropriate to meet the student's individual needs and confer meaningful educational benefit; for example, student needed small classes with a low student teacher ratio and teachers trained in multi-sensory teaching strategies, but the district's IEP proposed full-size mainstream classes for science, social studies, and all special classes, including physical education, and made no provision for social skills training. J.D. ex rel. C.D. v. Cherry Hill Twp. Bd. of Educ., OAL DKT. NO. EDS 8122-06, 2008 N.J. AGEN LEXIS 231, Final Decision (March 24, 2008).

Reimbursement for unilateral placement was denied where it was found that parents failed to notify the district of their dissatisfaction with the proposed or prior IEP for their multiply disabled daughter, and they further failed to give notice, within the time prescribed by N.J.A.C. 6A:14-2.10, of their intention to unilaterally place her in a private school with the expectation that the district reimburse them; the parents' failure to provide notice made it impossible for the district to address their concerns prior to removal. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Only reasonable interpretation of N.J.A.C. 6A:14-2.10(c)(2) is that it includes a requirement to notify the school district of an intent to seek reimbursement. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Parents' failure to sign the IEP (other than the initial IEP), without more proof, does not meet the requirement of N.J.A.C. 6A:14-2.10(c) that the parents inform the IEP team of their objection to the IEP. D.A. and A.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Parents were entitled to reimbursement for unilateral placement of their daughter for three consecutive school years in an out-of-district school where the district school failed to develop an IEP for their daughter prior to her entering the fifth grade. P.R. and C.R. ex rel. K.R. v. Roxbury Twp. Bd. of Educ., OAL DKT. NO. EDS 09874-06, 2007 N.J. AGEN LEXIS 778, Final Decision (October 31, 2007).

Parents were entitled to reimbursement for unilateral placement of their preschool child, who had language difficulties, in a private preschool in conjunction with a home-based applied behavior analysis (ABA) program, where the school district's ABA program did not appropriately address the child's needs. G.V. and L.V. ex rel. J.V. v. Wyckoff Twp. Bd. of Educ., OAL DKT. NO. EDS 11295-06, 2007 N.J. AGEN LEXIS 687, Final Decision (October 26, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents of a nine-year-old autistic student failed to show that a school district did not provide a legitimate offer of FAPE to their son, and, thus, their claim for reimbursement for a home schooling program was denied; further, parents' actions in the context of the entire matter were found to be unreasonable. In addition, limiting the child's studies to a home environment was more constrictive than his prior placement and did not appear to coincide with the parents' desire to have him eventually mainstreamed. R.V. and D.V. ex rel. S.V. v. Randolph Twp. Bd. of Educ., OAL DKT. NO. EDS 1336-2006, 2006 N.J. AGEN LEXIS 742, Final Decision (September 13, 2006).

Reimbursement for unilateral placement of student with autistic spectrum disorder in an out-of-district high school was denied, where parents did not inform the district at the last IEP meeting in June 2003 that they were considering an out-of-district placement and their actions were in bad faith; parents had hired a tutor the year before to prepare the student for entrance examinations at the private school, a letter for admission was dated Dec. 2002, and they did not attempt to negotiate a better IEP with the district. R.P. and V.P. ex rel. E.P. v. Ramsey Bd. of Educ., OAL DKT. NO. EDS 11682-04, 2006 N.J. AGEN LEXIS 745, Final Decision (September 5, 2006), aff'd, 2008 U.S. Dist. LEXIS 70884 (D.N.J. Sept. 17, 2008) (unpublished opinion) (affirming result, but rejecting certain rulings of the ALJ).

Reimbursement for unilateral placement of 18-year-old student at a private residential school post-twelfth grade was denied; the district offered the student a program for that year that addressed both academic and transition needs, with a half day school-to-work component. While high school transition obligations are not well defined, the duty should be viewed in light of the general IDEA principle that districts need not maximize a student's potential but are in compliance when they offer meaningful educational benefit. C.K., G.K. and P.K. v. New Providence Bd. of Educ., OAL DKT. NO. EDS 11780-05, 2006 N.J. AGEN LEXIS 711, Final Decision (August 10, 2006).

That preschool child with autism spectrum disorder had not "previously received special education and related services from the district of residence" within the meaning of N.J.A.C. 6A:14-2.10(b) did not bar parents from seeking reimbursement for the costs of private placement; the New Jersey regulation cannot serve as a basis for providing any less relief than is available under *Burlington*, 471 U.S. 359 (1985), and a contrary interpretation would place parents of preschool children in the untenable position of acquiescing to an inappropriate placement in order to preserve their right to reimbursement. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered

the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. *W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ.*, OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Parent of a child with a rare chromosomal defect who sought reimbursement for unilateral placement was entitled to one-half of the cost of tuition at an out-of-district school for two school years where, due to procedural IEP deficiencies, the in-district school failed to offer the child a FAPE; balancing the equities, the cost-sharing agreement in place for the child's kindergarten and first-grade years as a result of a settlement was extended to encompass the second- and third-grade years in dispute. *F.D. ex rel. F.D. v. Hillsborough Twp. Bd. of Educ.*, OAL DKT. NO. EDS 226-05, 2006 N.J. AGEN LEXIS 485, Final Decision (July 31, 2006).

School board was entitled to summary decision because parents seeking reimbursement for child's tuition had unilaterally removed their child from public school without adequate notice to the school board. Parents, through their signature, agreed to the 2004-05 IEP and made no mention at the IEP meeting of any intention to withdraw child from the public school and only provided notice of their intention to withdraw the child seven days after signing a contract with the private school. *D.D. and N.D. ex rel. A.D. v. Montclair Bd. of Educ.*, OAL Dkt. No. EDS 9295-05, 2005 N.J. AGEN LEXIS 618, Final Decision (October 17, 2005).

Reimbursement for unilateral placement of high school student at a therapeutic boarding school in Utah was denied where there was insufficient notice and insufficient involvement with the child study team. *L.F. and D.F. ex rel. J.F. v. Morris Bd. of Educ.*, OAL DKT. NO. EDS 11681-04, 2005 N.J. AGEN LEXIS 560, Final Decision (September 26, 2005).

Parents of fourth-grade student were entitled to reimbursement for unilateral placement at a private school (Winston School); the student had made very little progress toward reading on his own during four years in the district schools. *J.S. ex rel. M.S. v. Springfield Twp. Bd. of Educ.*, OAL DKT. NO. EDS 11220-04N, 2005 N.J. AGEN LEXIS 490, Final Decision (September 9, 2005).

School board pays for private school program where individualized placement program fails to meet special student's needs. *M.E. v. Ridgewood Board of Education*, 97 N.J.A.R.2d (EDS) 27.

SUBCHAPTER 3. SERVICES

Case Notes

State special education regulation limiting procedural safeguards applicable to disciplinary suspensions of students not yet receiving special education services to those students with respect to whom school district had already determined that evaluation for eligibility for services was warranted improperly narrowed scope of protections available under the Individuals with Disabilities Education Act (IDEA); under IDEA, procedural safeguards applied as soon as parent requested evaluation of a student or one of student's teachers expressed concern about student's behavior or performance to director of special education or other school district personnel. *Baer v. Klagholz*, 771 A.2d 603 (2001).

6A:14-3.1 General requirements

(a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation,

determination of eligibility, development and review of the individualized education program, and placement.

(b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant and a school social worker. All child study team members shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available to provide all needed services during the hours students are in attendance.

1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the New Jersey Department of Education.

(c) Specialists in the area of disability include, but are not be limited to, child study team members, as well as speech-language specialists, occupational therapists, physical therapists, audiologists, school nurses, advance practice nurses and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational certificate and a license are required to carry out activities under this chapter, the professional shall be appropriately certified and licensed.

(d) Child study team members and, to the extent appropriate, specialists in the area of disability:

1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;

2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;

3. May provide services to the educational staff with regard to techniques, materials and programs. Services include, but are not limited to, the following:

i. Consultation with school staff and parents;

ii. Training of school staff; and

iii. The design, implementation and evaluation of techniques addressing academic and behavioral difficulties;

4. May deliver appropriate related services to students with disabilities;

5. May provide preventive and support services to nondisabled students; and

6. May participate on Intervention and Referral Services teams pursuant to N.J.A.C. 6A:16-8.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (b), inserted "available to provide all needed services" and added (b)1; in (c), deleted "may" preceding "include", inserted "are" following "but", and inserted "appropriately" in the last sentence; rewrote (d).

3. Conduct an assessment according to (f)1 through 4 above. The assessment shall include written information from the classroom teacher of the educational impact created by the speech problem. Such assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (d) above; and

4. Prepare a written report of the results according to (h) below.

(h) A written report of the results of each assessment shall be prepared. At the discretion of the district, the written report may be prepared collaboratively by the evaluators or each evaluator may prepare an individually written report of the results of his or her assessments. Each written report shall be dated and signed by the individual(s) who conducted the assessment and shall include:

1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;

2. A statement regarding relevant behavior of the student, either reported or observed and the relationship of that behavior to the student's academic functioning;

3. If an assessment is not conducted under standard conditions, the extent to which it varied from standard conditions;

4. When a student is suspected of having a specific learning disability, the documentation of the determination of eligibility shall include a statement of:

i. Whether the student has a specific learning disability;

ii. The basis for making the determination;

iii. The relevant behavior noted during the observation;

iv. The relationship of that behavior to the student's academic performance;

v. Educationally relevant medical findings, if any;

vi. If a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;

vii. The determination concerning the effects of environmental, cultural or economic disadvantage;

viii. Whether the student achieves commensurate with his or her age;

ix. If a response to scientifically based interventions methodology is utilized, the instructional strategies utilized and the student-centered data collected with respect to the student; and

x. Whether there are strengths or weaknesses, or both, in performance or achievement relative to intellectual development in one of the following areas that require special education and related services;

(1) Oral expression;

(2) Listening comprehension;

(3) Written expression;

(4) Basic reading skill;

(5) Reading fluency skills;

(6) Reading comprehension;

(7) Mathematics calculation; and

(8) Mathematics problem solving;

5. Additionally, each team member shall certify in writing whether his or her report is in accordance with the conclusion of eligibility of the student. If his or her report does not reflect the conclusion of eligibility, the team member must submit a separate statement presenting his or her conclusions; and

6. When a response to scientifically based interventions methodology is utilized to make the determination of whether the student has a specific learning disability, the district board of education shall:

i. Ensure that such methodology includes scientifically based instruction by highly qualified instructors, and that multiple assessments of student progress are included in the evaluation of the student;

ii. Not be required to include more than the assessment conducted pursuant to the district's response to scientifically based intervention methodology in the evaluation of a student; and

iii. If the parent consents in writing, extend, as necessary, the time to complete an evaluation pursuant to (c) above.

(i) When conducting an initial evaluation or reevaluation, the reports and assessments of child study team members or related services providers from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions or professionals in private practice may be submitted by the parents to the child study team for consideration. Each report and assessment shall be reviewed and considered by the child study team member or related services provider with relevant knowledge or expertise. A report or component thereof may be utilized as a required assessment, if the assessment has been conducted within one year of the evaluation and the child study team determines the report and assessment meet the requirements of (h) above.

(j) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall transmit the summary to the child study team for the meeting according to (a) above to consider the need for a health appraisal or specialized medical evaluation.

Amended by R.1998 d.527, effective November 2, 1998.

See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

Added (i).

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

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

Rewrote the section.

Amended by R.2001 d.397, effective November 5, 2001.

See: N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (d), added 3; in (f), added 5.

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (e), Amended the NJAC reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

Case Notes

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

State special education regulations which did not track regulations under the Individuals with Disabilities Education Act (IDEA), requiring dissenting members of a child's individualized education program (IEP) team to file separate written reports, frustrated federal policy of pro-

viding disabled children with free appropriate public education (FAPE) and protecting their rights and those of their parents, where parents who disagreed with an IEP team's evaluation had no other way of discovering existence of disagreement among team members. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

Board of education failed to establish that it was providing a seven-year-old first-grader suffering from attention deficit disorder and disruptive behavior disorder with a free and appropriate education designed to address his behavioral issues which, in turn, prevented him from securing any benefit from his program as presently designed. There was no educational benefit to the child because the board had all but capitulated that the child's present program was not appropriate to meet his needs in the absence of a behavior intervention plan—in other words, through the repetitive suspensions from school, and in the absence of behavioral interventions intended to replace inappropriate behavior with appropriate behavior, there was no benefit to be derived by the child remaining in an in-district program. Without a functional behavioral assessment of the child being done, there was no adequate basis for determining his program, since his behavior impeded his learning. *D.S. ex rel. S.S. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 3836-08, 2008 N.J. AGEN LEXIS 895, Final Decision (May 20, 2008).

There was no basis to require a school district to provide an independent evaluation of a student at the district's own expense, after the district had already evaluated the student and determined that the student did not qualify for special education services; parents' contentions concerning a perceived discrepancy between the W-J III language arts scores and the NJASK score of "partially proficient" in language arts did not compel a different result. *Glen Ridge Bd. of Educ. v. J.D. and K.D.* ex rel. C.D., OAL DKT. NO. EDS 03056-08, 2008 N.J. AGEN LEXIS 230, Final Decision (April 2, 2008).

State special education regulation requiring that copies of evaluation tests and documentation of eligibility be given to parents at eligibility conference violated provision of Individuals with Disabilities Education Act (IDEA) requiring that such tests and documentation be provided to parents upon their completion, especially in the absence of any state requirement that materials be made available in parents' native language; IDEA and federal regulations required that tests and documentation be provided to parents in advance of eligibility meeting to permit parents' meaningful participation. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Eighth grader with a specific learning disability was not entitled to special education services because she was well adjusted and overall performing at grade level and thus not "in need" of services within the meaning of the IDEA. *J.S. and M.S. ex rel. R.S. v. Bound Brook Borough Bd. of Educ.*, OAL Dkt. No. EDS 2021-08, 2008 N.J. AGN LEXIS 347, Final Decision (May 15, 2008).

Parents satisfied burden of proof of establishing that student, who had an inability to attend school due to his fears of bullying, was in need of special education and related services, and the IEP team was ordered to formulate instruction specially designed to address his disability. *H.S. and N.S. ex rel. A.S. v. Moorestown Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10210-07, 2008 N.J. AGN LEXIS 232, Final Decision (March 20, 2008).

Child's ocular albinism did not appear to be interfering with her academic success when she was in kindergarten so that she did not present a need for special education; to be eligible for special education, a child must suffer from a specific disability and that disability must adversely affect the student's educational performance. Once the child's parents voluntarily removed her and placed her in an out-of-district private facility, the board's responsibility to seek out those children in its district who may be in need of special education because of some physical or mental impairment ended. *T.K. and A.K. ex rel. B.K. v. River Vale Bd. of Educ.*, OAL DKT. NO. EDS 1335-06, 2007 N.J. AGN LEXIS 380, Final Decision (June 19, 2007).

Parents were not entitled to tuition reimbursement for the placement of their nine-year-old daughter with a medical condition that impacted her vision in an out-of-district private facility because they enrolled her in the alternate school without first giving the local school district the opportunity to evaluate her for purposes of special education. *T.K. and A.K. ex rel. B.K. v. River Vale Bd. of Educ.*, OAL DKT. NO. EDS 1335-06, 2007 N.J. AGN LEXIS 380, Final Decision (June 19, 2007).

That preschool child with autism spectrum disorder had not "previously received special education and related services from the district of residence" within the meaning of N.J.A.C. 6A:14-2.10(b) did not bar parents from seeking reimbursement for the costs of private placement; the New Jersey regulation cannot serve as a basis for providing any less relief than is available under *Burlington*, 471 U.S. 359 (1985), and a contrary interpretation would place parents of preschool children in the untenable position of acquiescing to an inappropriate placement in order to preserve their right to reimbursement. *W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ.*, OAL DKT. NO. EDS 1547-05, 2006 N.J. AGN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

District met its burden of proving, by a preponderance of the evidence, that declassification of high-school student, classified as "other health impaired," was appropriate, where there was expert testimony from both sides that the student's performance was consistently well within the average range; ALJ found that the student's ADHD did not adversely affect her educational performance and that she did not suffer from a specific learning disability. *D.F. and S.H. ex rel. R.F. v.*

Livingston Twp. Bd. of Educ., OAL DKT. NO. EDS 11549-04, 2005 N.J. AGN LEXIS 433, Final Decision (August 22, 2005).

Sufficient data supporting classification justifies school board's request to classify student as emotionally disturbed. *Clifton Board of Education v. J.T.*, 97 N.J.A.R.2d (EDS) 121.

School board required to continue student's placement consistent with IEP. *C.R. v. Atlantic City Board of Education*, 96 N.J.A.R.2d (EDS) 384.

Six-year old who assaulted teacher and other students properly classified as emotionally disturbed. *Jersey City Board of Education v. T.H.*, 96 N.J.A.R.2d (EDE) 358.

Special education high school student would not be reclassified from neurologically impaired to autistic. *R.S. v. Ridgewood Board of Education*, 96 N.J.A.R.2d (EDS) 299.

Failure of mentally retarded student to progress supported nonconsensual classification as full-time special education student and placement in moderate cognitive program. *Elizabeth Board of Education v. L.H.*, 96 N.J.A.R.2d (EDS) 297.

Classification of student as perceptually impaired was ordered over parental objection where three child study teams agreed on student's status as disabled. *Marlboro Township Board of Education v. R.F.*, 96 N.J.A.R.2d (EDS) 184.

Emotionally disturbed student was entitled to special education classification and home study. *R.S. v. East Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 177.

Reimbursement of evaluation and counseling costs for nonclassified student were denied since nonclassified students are not covered under Individuals with Disabilities Education Act. *M.C. v. Franklin Board of Education*, 96 N.J.A.R.2d (EDS) 175.

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.

6A:14-3.6 Determination of eligibility for speech-language services

(a) "Eligible for speech-language services" means a speech and/or language disorder as follows:

1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences or the influence of a foreign language, which adversely affects a student's educational performance; and/or

2. A language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c) 4 and the student requires speech-language services only.

(b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(g). Documentation of the

educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.

2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.

3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

(c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(k)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(k)2. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results and the service provider at the IEP meeting. The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve as the agency representative at the IEP meeting.

(e) When a student has been determined eligible for speech-language services and other disabilities are suspected or other services are being considered, the student shall be referred to the child study team.

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

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

In (c), deleted a reference to adult students; and in (d), substituted "may" for "shall not" in the last sentence.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In the introductory paragraph of (b), substituted "(g)" for "(e)"; in (c), substituted "(k)1" for "(i)1", and added "not less than 10 calendar days prior to the meeting" at the end; in (d), substituted "(k)2" for "(i)2" and inserted "The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10."

Case Notes

School board required to provide extended-year services to seven year old with speech disorder. *J.M. v. Alloway Township Board of Education*, 97 N.J.A.R.2d (EDS) 39.

6A:14-3.7 Individualized education program

(a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.

1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;

2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;

3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and

4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(k)2 for students classified eligible for special education and related services or according to

needs, taking into account the student's strengths, preferences and interests. In addition to the above, transition services shall include:

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

13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;

14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;

15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;

16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and

17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with nondisabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.

(f) The IEP for the student classified as eligible for speech-language services shall include (e)1 through 7, 15 and 16 above. When appropriate, (e)11, 12, 13, and 14 above shall be included. The statement of the current academic and functional achievement in (e)1 above shall include a description of the student's status in speech-language performance and a description of how the student's disability affects the student's involvement and progress in the general curriculum. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.

(g) If an agency other than the district board of education fails to provide the transition services included in the student's individualized education program, the district board

of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.

(h) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.

1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.

2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.

(j) The IEP team shall review:

1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;

3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;

4. The student's anticipated needs; or

5. Other relevant matters.

(k) For those students in a separate setting, the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement.

(l) Signatures of those persons who participated in the meeting to develop the IEP shall be maintained and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.

(m) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3.

Amended by R.1998 d.527, effective November 2, 1998.

See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

In (d)3, rewrote the introductory paragraph.

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

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

Rewrote the section.

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (d)5i, inserted "general" following "particular" and amended NJAC reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

Case Notes

Participation by representatives of both school districts in which disabled child of divorced parents with joint custody resided, in developing and reviewing individualized educational plan (IEP), would not be inconsistent with Individuals With Disabilities Education Act (IDEA) nor New Jersey Administrative Code provision for IEP team to develop and periodically review child's IEP, where (IDEA) required team that developed and reviewed IEP to be "individualized" and to include child's parents, at least one of the child's teachers, and a representative of the local school district, and allowed participation of other individuals who had knowledge or special expertise regarding child. *Sommerville Bd. of Educ. v. Manville*, 167 N.J. 55 (2001).

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 (IDEA). *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.

"Progress key" method of setting out educational objectives and student's progress toward those objectives, as employed in Individual Education Program (IEP) prepared by school district for severely disabled student, did not satisfy procedural requirements of Individuals with Disabilities Education Act (IDEA) and New Jersey law with respect to provision of statement of annual goals with specific measurable objectives, and of evaluation criteria related to those goals and objectives, despite fact that "progress key" method had been approved by state Department of Education. *D.B. v. Ocean Tp. Bd. of Educ.*, 985 F.Supp. 457 (D.N.J. 1997).

Parent's lack of consent no bar to implementing properly produced education plan for special education student. *Riverton Board of Education v. A.L.*, 97 N.J.A.R.2d (EDS) 130.

Delay seeking relief from poor grades defeats emergency petition. *J.T. v. Holmdel Board of Education*, 97 N.J.A.R.2d (EDS) 129.

Student granted compensatory education after inappropriate special education placement. *T.B. v. Camden Vocational Technical High School and Lower Camden County Regional High School District Number 1*, 97 N.J.A.R.2d (EDS) 104.

School board required transportation only from child's home. *I.D. and M.D. v. Board of Education of the Township of Hazlet*, 97 N.J.A.R.2d (EDS) 33.

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.

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 placement of 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.

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.

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

State special education regulations governing consultation for transition services with the state Division of Vocational Rehabilitation Services (DVRS) and unspecified "other agencies" were sufficiently broad to encompass consultation with state Division of Developmental Disabilities (DDD) and Department of Human Services, Commission for the Blind and Visually Impaired (CBVI), as Individuals with Disabilities Education Act (IDEA) did not require specific reference to agencies serving the blind or those so severely developmentally disabled as to be unemployable. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Regulation governing education of handicapped students impermissibly narrowed scope of Individuals with Disabilities Education Act (IDEA) with respect to provision of assistive technology and services; regulation failed to expressly or impliedly incorporate federal requirements and did not adequately define crucial terms. *Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6, and 4.3*, 305 N.J.Super. 389, 702 A.2d 838 (A.D. 1997).

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

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

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

Parents awarded private education reimbursement following improper placement by child study team entitled to interest on expenses from date of disbursement. *Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty.*, 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

Regulations of the State Board of Education adopted. *New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. *M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 794), a school district was required to provide disabled students with equal and meaningful access to an after-school program that operated as a not-for-profit enterprise fund because the program was not independent of the district. *K.G. and J.G. ex rel. O.G. v. Morris Bd. of Educ.*, OAL DKT. NO. EDS 11872-06, 2007 N.J. AGEN LEXIS 480, Final Decision (August 10, 2007).

Reimbursement for unilateral placement out-of-district at the Lakeview School was denied where the ALJ found that the in-district IEP team reasonably determined that the student could not be satisfactorily educated in sixth grade middle school mainstream classes due to the difficulty and pace of those classes. *K.M. and E.M. ex rel. Z.M. v. Flemington-Raritan Reg'l Bd. of Educ.*, OAL DKT. NO. EDS 10048-05 and EDS 56-06, 2006 N.J. AGEN LEXIS 1002, Final Decision (December 5, 2006).

Parent of a child with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder, and Post Traumatic Stress Disorder failed to present sufficient evidence that the child's IEP was insufficient where the parent did not call any experts nor did any teacher or administrator testify that the IEP was imprecise. *R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ.*, OAL DKT. NO. EDS 2470-06, 2006 N.J. AGEN LEXIS 832, Final Decision (September 29, 2006).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. *W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ.*, OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

District's use of an interim IEP, which provided for an inadequate 10 hours of home instruction per week for a preschool autistic child "in the interim" of the district securing an out-of-district placement in a preschool disabled self-contained classroom, and which lacked adequate details about the program sought, was unfair to parents and did not appear to be supported by the regulations. *W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ.*, OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Proposed IEP for 16-year-old high school student was not reasonably calculated to provide him with a meaningful educational benefit because it failed to give sufficient consideration to his disabilities in the context of his underlying issues of anxiety and fragile self-esteem. *S.C. ex rel. D.C. v. Montgomery Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10147-04, 2005 N.J. AGEN LEXIS 933, Final Decision (December 22, 2005), *aff'd*, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 26, 2007) (unpublished opinion).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during the 2003 extended school year because although student's case manager could not attribute the progress student made to

either the school program or the home-based program or both, it was clear, from the case manager's testimony that progress was made during the 2002-03 school year and the 2003 extended school year and it was equally clear that the student had the benefit of both school-based ABA instruction and the home-based program. Both programs were successful in providing a meaningful educational benefit and it was impossible to allocate the proportion of benefit derived from each of the programs. *J.F. ex rel. G.F. v. West Orange Bd. of Educ.*, OAL Dkt. No. EDS 9099-04, 2005 N.J. AGEN LEXIS 659, Final Decision (October 31, 2005).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during 2003-04 where ABA program was an integral and important part of the student's progress made during the school year and where the school district relied on previous year's IEP to which the parents had not consented. *J.F. ex rel. G.F. v. West Orange Bd. of Educ.*, OAL Dkt. No. EDS 9099-04, 2005 N.J. AGEN LEXIS 659, Final Decision (October 31, 2005).

Modification of special education program for student with articulation disability did not violate her federal rights. *Norwood Board of Education v. C.C.*, 96 N.J.A.R.2d (EDS) 108.

Individualized education program sufficient if in compliance with statutory order. *C.L. v. State-Operated School District of Jersey City*, 96 N.J.A.R.2d (EDS) 83.

Request for extended day supplemental instruction and extended school year denied when classified student's individualized education program (IEP) found sufficient without such services. *S.R. v. Manasquan Board of Education*, 96 N.J.A.R.2d (EDS) 32.

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.

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.

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.

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.

Agreement with parent and individualized educational program both established responsibility of school board for orthopedically handicapped child's occupational and physically therapy during summer months. *West Milford v. C.F.*, 95 N.J.A.R.2d (EDS) 204.

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

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.

Disabilities of emotionally disturbed and gifted student were not sufficient to warrant removal from regular setting. *Matawan-Aberdeen v. R.C., A Minor*, 95 N.J.A.R.2d (EDS) 29.

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.

Classified student entitled to transfer from special education class to comparable mainstream class. *P.D. v. Hasbrouck Heights Board of Education*, 95 N.J.A.R.2d (EDS) 5.

Teachers could amend individualized educational plan to assist neurologically impaired child during epileptic seizures. *S.G. v. West Orange*, 95 N.J.A.R.2d (EDS) 1.

Deaf student entitled to attend summer school. *R.C. v. Jersey City State-Operated School District*, 94 N.J.A.R.2d (EDS) 166.

Request for an extended school year program was denied for multiply handicapped 14-year old. *J.B. v. Middletown Township Board of Education*, 94 N.J.A.R.2d (EDS) 129.

Denial of emergency transfer of emotionally disturbed child to prior school was proper. *A.W. v. Jefferson Township Board of Education*, 94 N.J.A.R.2d (EDS) 51.

Request to modify special education student's individual education plan was properly denied. *E.J. v. Mansfield Board of Education*, 94 N.J.A.R.2d (EDS) 3.

Classification of 15-year-old child born with Down's syndrome as TMR and to recommend placement in TMR/EMR program at high school was appropriate. *J.B. v. West Orange Board of Education*, 93 N.J.A.R.2d (EDS) 294.

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.

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.

Severely disabled child required school district to comply with Individualized Education Policy in order to deliver a free and appropriate education. *E.M., a Child v. West Orange*, 93 N.J.A.R.2d (EDS) 111.

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.

Record established that Individualized Education Program for 10-year-old neurologically impaired student should be implemented. *Jersey City School District v. N.G.*, 93 N.J.A.R.2d (EDS) 28.

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.

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.

Evidence supported in-district placement of neurologically impaired student; parents' preference for out-of-district placement only one factor in decision. *S.A. v. Board of Education of Township of North Brunswick*, 92 N.J.A.R.2d (EDS) 220.

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.

Parents not entitled to reimbursement for placement at nonpublic school; flaws in Individualized Education Program not result in significant harm; no showing that academic program of school met requirements of Program. *N.P. v. Kinnelon Board of Education*, 92 N.J.A.R.2d (EDS) 190.

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.

Placement at nonpublic school not authorized; no valid individualized education program. *M.Y. v. Fair Lawn Board of Education*, 92 N.J.A.R.2d (EDS) 163.

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.

Student classified as socially maladjusted was entitled to emergent relief authorizing him to participate in high school graduation ceremonies. *B.M. v. Kingsway Regional Board of Education*, 92 N.J.A.R.2d (EDS) 130.

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.

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.

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

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

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).

Under former N.J.A.C. 6:28-4.3 and 4.8, a school board is responsible for residential costs when an appropriate nonresidential placement is not available. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Disparate treatment of neurologically versus perceptually impaired pupils (citing former regulations.). *M.D. v. Bd. of Ed., Rahway, Union Cty.*, 1976 S.L.D. 323, 1976 S.L.D. 333, 1977 S.L.D. 1296.

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Inclusion for the Developmentally Disabled Child. Michael I. Inzelbuch, 222 N.J.L.J. 22 (2003).

6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if condi-

tions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district both agree that a reevaluation prior to the expiration of one year as set forth above is warranted. When a reevaluation is conducted sooner than three years from the previous evaluation as set forth above, the reevaluation shall be completed in accordance with the timeframes in (e) below.

1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.

(b) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data on the student, including:

- i. Evaluations and information provided by the parents;
- ii. Current classroom based assessments and observations; and
- iii. Observations by teachers and related services providers; and

2. On the basis of that review, and input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine:

- i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);
- ii. The present levels of academic achievement and functional performance and educational and related developmental needs of the student;
- iii. Whether the student needs special education and related services, and the academic, developmental, functional and behavioral needs of the student and how they should appropriately be addressed in the students IEP; and
- iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

3. If the IEP team determines that no additional data are needed to determine whether the student continues to be a student with a disability, the district board of education:

i. Shall provide notice according to N.J.A.C. 6A:14-2.3 to the student's parents of that determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and

ii. Shall not be required to conduct such an assessment unless requested by the student's parents;

4. If additional data are needed, the IEP team shall determine which child study team members and/or specialists shall administer tests and other assessment procedures to make the required determinations in (b)2i through iv above.

(c) Prior to conducting any assessment as part of a reevaluation of a student with a disability, the district board of education shall obtain consent from the parent according to N.J.A.C. 6A:14-2.3.

1. Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(f)1 through 5 or 3.4(g), as appropriate.

(d) A reevaluation shall be conducted when a change in eligibility is being considered, except that a reevaluation shall not be required before the termination of a student's eligibility under this chapter due to graduation or exceeding age 21.

(e) Unless the parent and district board of education agree to waive a reevaluation, all requirements of this section for performing a reevaluation shall, as applicable, be completed within 60 days of the date the parent provides consent for the assessments to be conducted as part of the reevaluation or by the expiration of the three year timeframe from completion of the prior evaluation or reevaluation, whichever occurs sooner.

(f) When a reevaluation is completed:

1. A meeting of the student's IEP team according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(c) shall be conducted to determine whether the student continues to be a student with a disability. A copy of the evaluation report(s) and documentation of the eligibility shall be given to the parent at least 10 days prior to the meeting.

2. If the student remains eligible, an IEP team meeting according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(d) shall be conducted to review and revise the student's IEP.

(g) By June 30 of a student's last year of eligibility for a program for preschoolers with disabilities, a reevaluation shall be conducted and, if the student continues to be a student with a disability, the student shall be classified according to N.J.A.C. 6A:14-3.5(c) or 3.6(a).

Amended by R.2000 d.230, effective June 5, 2000.
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Rewrote (b); amended (c) and (e); in (f)1, deleted "or adult student" following "parent" in the second sentence; added (g).

Amended by R.2001 d.397, effective November 5, 2001.
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (d), substituted "through 3" for "and 2".

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (a); made a grammatical correction in paragraph (b)2; rewrote (b)2ii and (b)2iii; in (b)3i and introductory paragraph of (c), updated the N.J.A.C. reference; recodified former (d) as new (c)1, updating N.J.A.C. references; recodified former (e) as new (d); added new (e); in (f)1 and (f)2, updated N.J.A.C. references; in (f)1, added "at least 10 days prior to the meeting" at the end.

Case Notes

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. Haddonfield Bd. of Educ.*, D.N.J.1991, 769 F.Supp. 1313.

Board of education's denial of parent's request for an independent reading evaluation and a functional assessment of a 16-year-old pupil who was classified as other health impaired was proper where board maintained that reading was a component of the educational evaluation, and that a functional assessment reflected various aspects and components of the psychological, educational, speech, and social evaluations, and the parent offered no evidence to the contrary. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Since board of education and parent were in agreement that certain assessments were necessary as part of the reevaluation of a 16-year-old pupil who was classified as other health impaired, and since board of education offered two possible independent evaluators for each evaluation but parent maintained that she should be given a choice of more than two evaluators for each evaluation, but she failed to identify any problem with any of the evaluators offered by the board or suggest any others of her own, the board was granted consent to have the independent evaluations conducted by any of the evaluators listed. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Student ordered to undergo psychiatric evaluation. *Vernon Township v. G.F.*, 97 N.J.A.R.2d (EDS) 56.

Testing results indicating special education student no longer perceptually impaired justifies declassification. *C.W. v. Southern Gloucester County Regional*, 97 N.J.A.R.2d (EDS) 34.

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.

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.

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.

6A:14-3.9 Related services

(a) Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.
2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.
4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.

i. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.

ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.

5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.

6. Recreation shall be provided by certified school personnel.

7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.

8. Nursing services shall be provided as a related service only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the individualized education program of the child.

9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.

10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.

11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.

12. Other related services shall be provided as specified in the student's IEP.

(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.

New Rule, R.2003 d.387, effective October 6, 2003.
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).
Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In the introductory paragraph of (a), inserted “, school nurse services, recreation, social work services, medical services”; in (a)5, substituted “students with disabilities” for “the disabled”; added new (a)8 through (a)11 and recodified former (a)8 as new (a)12.

Case Notes

Although regulations provide for transportation to and from school as required in an IEP, a school district is not required to physically transport an eight-year-old autistic child to speech therapy where reasonable alternatives exist, such as reimbursement or providing the therapy after school. C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 8034-08, 2008 N.J. AGEN LEXIS 876, Final Decision (October 29, 2008).

SUBCHAPTER 4. PROGRAMS AND INSTRUCTION

6A:14-4.1 General requirements

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

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

(c) The length of the school day and the academic year of programs for students with disabilities, including preschoolers with disabilities, shall be at least as long as that established for nondisabled students. The IEP team may, in its discretion, alter the length of the school day based on the needs of the student.

(d) District board of education operated special class programs for preschoolers with disabilities 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 student instruction, with the following exception:

1. Preschool disabled classes operated by a district board of education shall operate at least as long as any district program for nondisabled preschoolers, but not less than 10 hours per week.

4. Placement of a student with a disability is determined at least annually and, for a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered at least annually;

5. Placement is based on his or her individualized education program;

6. Placement is provided in appropriate educational settings as close to home as possible;

7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not a student with a disability;

8. Consideration is given to:

i. Whether the student can be educated satisfactorily 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 student with disabilities or the other students in the class;

9. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;

10. Placement in a program option is based on the individual needs of the student; and

11. When determining the restrictiveness of a particular program option, such determinations are based solely on the amount of time a student with disabilities is educated outside the general education setting.

(b) Each district board of education shall provide non-academic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.

1. In providing or arranging for the provision of non-academic and extracurricular services and activities, each district board of education shall ensure that each student with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate.

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

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

Added (b).

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a)2, substituted "general education" for "regular" throughout; rewrote (a)4; in (a)7, substituted "a student with a disability" for "disabled" and deleted "and" at the end; added (a)9 through (a)11 and substituted "," for "." at (a)8iii.

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.

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

State 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).

Parents of a nine-year old student, who was classified as eligible for special education and related services due to blindness, cerebral palsy, and other disabilities, failed to carry their burden of proving denial of FAPE regarding the district's decision to move student from a mixed resource room/regular class program in her neighborhood school to a multiply disabled program at a different school, placing her in a self-contained multiply disabled classroom for all general education classes and a mainstream classroom for non-academic classes. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Although *L. 2007, c. 331 (N.J.S.A. 18A:46-1.1)* places the burden of proof and burden of production in a due process hearing on the school district, petitioners requested a due process hearing on September 11, 2007, prior to the January 13, 2008 effective date of the act, and thus

were subject to previous law, which placed the burden of proof on the party seeking relief. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Where board of education maintained that it could provide a 10-year-old boy diagnosed with autism with an appropriate education in a self-contained class for autistic pupils within the school district and the child's parent contended that the child should remain in a self-contained class for multiply-disabled pupils in a public school outside of child's regular district, the placement proposed by the board was preferable; the in-district self-contained class was specifically designed for children with autism and was at the appropriate grade level for the child and a placement within the local school district was less restrictive than one that was in another school district. *J.G. ex rel. J.G. v. West New York Bd. of Educ.*, OAL Dkt. No. EDS 3385-08, 2008 N.J. AGEN LEXIS 893, Final Decision (May 6, 2008).

Grandparent guardians who sought to maintain the placement of their third-grade granddaughter with Downs Syndrome in the board's elementary school were denied such relief because the child's communication impairment necessitated her placement at a school for children with disabilities where her needs could be better served. *D.A. and M.A. ex rel. K. A. v. Pleasantville Bd. of Educ.*, OAL DKT. NO. EDS 2050-07, 2007 N.J. AGEN LEXIS 381, Final Decision (June 12, 2007).

Parents were entitled to tuition reimbursement for unilateral placement of their 16-year-old son at a private school where the IEP offered by the school district would not have provided him with a FAPE for the school year, and expert testimony showed that he would be at great risk of recurring symptoms of anxiety and depression that would interfere with his learning if he were placed in the public high school program proposed by the district. *S.C. ex rel. D.C. v. Montgomery Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10147-04, 2005 N.J. AGEN LEXIS 933, Final Decision (December 22, 2005), *aff'd*, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 26, 2007) (unpublished opinion).

Parent, who believed that her son no longer needed special education services and sought to disenroll him or alternatively have him placed at another school, failed to demonstrate that the child's current placement was not appropriate or that her son no longer needed special education; extensive testimony showed that the child needed both behavioral and academic special services. *S.C. ex rel. M.C. v. Newark Bd. of Educ.*, OAL DKT. NO. EDS 12332-05, 2005 N.J. AGEN LEXIS 957, Final Decision (December 14, 2005).

Special student's babysitter's location used to meet legal requirement of placing student in appropriate educational setting closest to student's home. *Upper Freehold Regional School District v. K.B.*, 97 N.J.A.R.2d (EDS) 50.

In-district placement of special education student was appropriate where placement conferred some educational benefit and constituted least restrictive environment. *K.H. v. Wayne Township Board of Education*, 96 N.J.A.R.2d (EDS) 226.

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.

6A:14-4.3 Program options

(a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth

below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. Single subject resource programs outside the general education class;
2. A special class program in the student's local school district;
3. A special education program in another local school district;
4. A special education program in a vocational and technical school;
5. A special education program in the following settings:
 - i. A county special services school district;
 - ii. An educational services commission;

iii. A jointure commission; and

iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;

6. A program operated by a department of New Jersey State government;

7. A community rehabilitation program;

8. A program in a hospital, convalescent center or other medical institution;

9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;

10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;

11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and

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

(c) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.

1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.

(d) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a board of education according to the following:

1. Such early childhood program shall be licensed or approved by a governmental agency;

2. The district board of education shall assure that the program is nonsectarian;

3. The district board of education shall assure the student's IEP can be implemented in the early childhood

program with any supplementary aids and services that are specified in the student's IEP; and

4. The special education and related services specified in the student's IEP shall be provided by appropriately certified and/or licensed personnel or by paraprofessionals according to N.J.A.C. 6A:14-3.9(a) or 4.1(e).

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

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

Added (b)1.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Added new (a) and recodified former (a) as (b), with substantial changes; recodified former (b) and (c) as (c) and (d), with an amendment to the first N.J.A.C. reference at new (d)4.

Case Notes

School board could not consider as least restrictive environment a private preschool program in which preschool handicapped child could receive supplementary services since it was not accredited by the state. *T.R. v. Kingwood Township Board of Education*, 32 F.Supp.2d 720 (D.N.J. 1998).

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

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).

School Board granted permission to place student in P.I. program. *Jersey City v. A.C.*, 97 N.J.A.R.2d (EDS) 55.

No emergency out-of-state placement for special education student if petition fails to meet standard for emergency relief. *A.C. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.

(m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

<u>Resource and Supplementary Instruction</u>	<u>Preschool/Elementary</u>		<u>Secondary</u>	
	<u>No Aide</u>	<u>Aide Required</u>	<u>No Aide</u>	<u>Aide required</u>
In-class	8	—	10	—
Pull-out support and supplemental instruction				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9

<u>Replacement Resource</u>	<u>Preschool/Elementary</u>		<u>Secondary</u>	
	<u>No Aide</u>	<u>Aide Required</u>	<u>No Aide</u>	<u>Aide Required</u>
Pull-out				
Single subject	6	7 to 9	9	10 to 12

(n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and ten at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.

(o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be increased in accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.

(p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.

(q) For the 2006-2007 and 2007-2008 school years, multiple-subject replacement pull-out resource programs may be operated in accordance with the provisions of this section for a maximum of four students in any such program at both the elementary and secondary levels. The four student limit shall not be excepted pursuant to N.J.A.C. 6A:14-4.9. Beginning

July 1, 2008, multiple-subject pull-out resource programs shall no longer be operated.

Amended by R.1998 d.527, effective November 2, 1998.

See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

In (i), inserted "only at the preschool or elementary school level" following "provided", and substituted "three students with disabilities" for "five students with disabilities for the preschool, elementary or secondary level" at the end; and added (k).

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

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

Amended (f); added new (j); and recodified former (j) and (k) as (k) and (l).

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a), amended NJAC reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section. Section was "Program criteria: resource programs".

6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation

(a) A special class program shall serve students who have similar intensive educational, behavioral and other needs related to their disabilities in accordance with their individualized education programs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:

1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;

2. The age span in special class programs shall not exceed three years in elementary programs, and shall not exceed four years in secondary programs;

- i. The provisions of this paragraph with respect to elementary programs shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. For the 2006-2007 school year, the age range in elementary programs shall not exceed four years. However, school districts may, at their discretion, adhere to the provisions of this paragraph prior to July 1, 2007; and

3. A kindergarten shall not be approved as a special class program.

(b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.

(c) The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe cognitive disabilities or severe to profound cognitive disabilities.

(d) Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.

(e) Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as set forth below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

Program	I	II	III
		Instructional Size: No Classroom Aide Required	Instructional Size: Classroom Aide Required
Auditory impairments	8		9 to 12
Autism ¹	3		4 to 6 7 to 9 (Secondary only; (Two aides required)
Behavioral disabilities	9		10 to 12
Cognitive ²			
Mild	12		13 to 16
Moderate	10		11 to 13
Severe	3		4 to 6 7 to 9 (Two aides required)
Learning and/or language disabilities			
Mild to moderate	10		11 to 16
Severe	8		9 to 12
Multiple disabilities	8		9 to 12
Preschool disabilities ³	—		1 to 8 9 to 12 (Two aides required)
Visual impairments	8		9 to 12

¹A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.

²A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.

³A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.

(f) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.

(g) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an

adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.

(h) Vocational education programs shall meet the following criteria:

1. For the student 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 IEP decisions; and

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

i. For a class consisting of students with 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 according to N.J.A.C. 6A:14-4.9. 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 student needs and instructional considerations:

(1) The nature and degree of the student's educationally disabling condition;

(2) The interests, aptitudes and abilities of the student;

(3) The functional level of the student;

(4) The employment potential of the student;

(5) The type of occupational area;

(6) Instructional strategies;

(7) Safety factors; and

(8) Physical facility requirements.

(i) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor, Division of Vocational Rehabilitation Services, the New Jersey Department of Human Services, Commission for the Blind and Visually Impaired and the Department of Human Services, Division

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.

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.

Law Review and Journal Commentaries

Out-Of-District Placement for the Special Needs Child. Michaelene Loughlin, Sherry Chachkin, 222 N.J.L.J. 43 (2003).

SUBCHAPTER 7. RECEIVING SCHOOLS

Case Notes

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

6A:14-7.1 General requirements

(a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services) and public college operated programs for students with disabilities. Receiving schools shall obtain prior written approval from the Department of Education to provide programs for students with disabilities through contracts with district boards of education.

1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education in this subchapter.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

(b) For a student 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.

(c) Programs for students with disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding age range and class size shall be requested by the district of residence board of education and determined pursuant to N.J.A.C. 6A:14-4.9. District boards of education and providers of programs under this subchapter shall maintain documentation of this approval.

(d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.

(e) Annually, providers of programs pursuant to this subchapter shall prepare and submit a report, in a format provided by the Department of Education, to the Department of Education through the county office. The report shall include, but not be limited to, the number of enrolled students by age, race, ethnicity, and additionally, the number of students whose placements were terminated during the previous school year, and, when known, the subsequent placement for each student whose placement was terminated.

(f) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey students.

(g) The residential component of an approved private school for students with disabilities shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the State in which the school is located.

(h) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in or shall not be employed by any approved private school for students with disabilities which serves students with disabilities placed by that district board of education.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (c)1; added new (e) and recodified former (e) through (g) as new (f) through (h); throughout the section, substituted "students with disabilities" for "the disabled".

Case Notes

Authority to contract for speech therapy services. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

Public school unable to compel private school to re-admit expelled student. *H.F. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 101.

6A:14-7.2 Approval procedures to establish a new receiving school

(a) Prior to the establishment of a receiving school for students with disabilities, an application shall be submitted to the Department of Education according to the following schedule:

1. The applicant shall submit a description of the program and services to be offered which shall include, but not be limited to:

i. The educational philosophy of the program;

ii. Characteristics of the program, which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session;

iii. The curriculum and materials including a description of how the core curriculum content standards will be implemented;

iv. A mechanism for evaluating student progress and program efficacy; and

v. The organizational structure, including projected number of personnel by title, job function and personnel requirements, including certification;

2. A survey of need indicating the number, age range, types of students with disabilities to be served by the proposed programs/services and the reasons these students cannot be served in the resident district, supported by documentation from local public school districts. Documentation of local school districts surveyed shall be included. The Department of Education shall determine if the program to be provided by the receiving school is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the needs assessment.

i. Any appeal of a decision to deny approval may be made to the Commissioner of Education in accordance with N.J.A.C. 6A:3;

3. Additionally, each approved private school for students with disabilities shall submit:

i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, The Individuals with Disabilities Education Act (20 U.S.C. §§1400 et seq.) and the Rehabilitation Act of 1973 (U.S.P.L. 93-112 Section 504, 29 U.S.C. §794a);

ii. The administrative policies and procedures of the school;

iii. An assurance that necessary emergency procedures will be followed;

iv. A copy of the approval of the facility by the issuing agency, including a certificate of occupancy and certification of health and fire approval;

v. A copy of the certificate of incorporation;

vi. Staffing information which shall include a list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required, the function he or she will perform, and that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual; and

vii. A projected budget in accordance with N.J.A.C. 6A:23-4.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a)2, changed N.J.A.C. reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

Case Notes

Exception would not be made for applicant seeking approval for a private school for the disabled, where certain potential student referrals were not received by the Office of Special Education Programs (OSEP) until after the Office had notified the applicant that its application was eight short of the minimum requisite number, necessitating rejection; to compel the OSEP to accord such preferential treatment to one applicant over others would serve to compromise the integrity of the whole application process. *Y.E.S. Academy v. N.J. State Dep't of Educ., Office of Special Educ. Programs*, OAL Dkt. No. EDU 4665-07, Commissioner's Decision (August 15, 2007).

6A:14-7.3 Amendment procedures for receiving schools

(a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided or the location of its facilities by obtaining prior written approval from the Department of Education through its county offices of education.

1. To amend the policies, procedures, nature and scope of the services provided, or increase or decrease the services provided, the approved receiving school shall submit the following:

i. A copy of the revised policy and/or procedure;

ii. A revised description of the scope and nature of the services to be offered according to N.J.A.C. 6A:14-7.2(a)3iii(4); and

iii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual and the function he or she shall perform.

2. To amend the location of its facilities, an approved private school for students with disabilities shall submit a copy of the valid health, fire, HVAC inspections, occupancy and, if applicable sewerage plant.

3. In accordance with N.J.A.C. 6A:23-4.3(a)1, if an approved private school for students with disabilities seeks to expand the school and its program by opening an additional location, the school must submit an application for approval as a new private school for students with disabilities in accordance with this subchapter and receive such approval prior to operating an approved private school in the new location.

(b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for students with disabilities, the approved private school shall provide written notification to the Department of Education through the county office within seven calendar days of the change.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a)liii, inserted “, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual”; in (a)2,

substituted “students with disabilities” for “the disabled” and “HVAC” for “boiler”; added (a)3; in (b), substituted “students with disabilities” for “the disabled”.