

CHAPTER 6A
SPECIAL EDUCATION PROGRAM

Authority

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

Source and Effective Date

R.1995 d.176, effective February 27, 1995.
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

Executive Order No. 66(1978) Expiration Date

Chapter 6A, Special Education Program, expires on February 27, 2000.

Chapter Historical Note

Chapter 6A, Special Education Program, became effective January 3, 1983 as R.1982 d.462. See: 14 N.J.R. 930(a), 15 N.J.R. 25(b). Amendments became effective March 21, 1983 as R.1983 d.88. See: 15 N.J.R. 2(a), 15 N.J.R. 437(a). Further amendments became effective June 20, 1983 as R.1983 d.253. See: 15 N.J.R. 451(a), 15 N.J.R. 1015(a). Further amendments became effective September 6, 1983 as R.1983 d.358. See: 15 N.J.R. 978(a), 15 N.J.R. 1467(a). Further amendments became effective February 6, 1984 as R.1984 d.9. See: 15 N.J.R. 1402(a), 16 N.J.R. 238(a). Further amendments became effective May 21, 1984 as R.1984 d.203. See: 16 N.J.R. 408(a), 16 N.J.R. 1196(a). Amendments became effective June 18, 1984 as R.1984 d.258. See: 16 N.J.R. 780(a), 16 N.J.R. 1468(a). Further amendments became effective October 15, 1984 as R.1984 d.476. See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a). Further amendments became effective November 4, 1985 as R.1985 d.539. See: 17 N.J.R. 2073(a), 17 N.J.R. 2606(a). Further amendments became effective April 7, 1986 as R.1986 d.85. See: 17 N.J.R. 2586(a), 18 N.J.R. 634(b). Further amendments became effective June 2, 1986 as R.1986 d.195. See: 18 N.J.R. 584(a), 18 N.J.R. 1192(a).

Chapter 6A was repealed and a new chapter became effective May 4, 1987 (operative July 1, 1987) as R.1987 d.200. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a). Chapter 6A was extensively revised by R.1990 d.169, effective March 19, 1990. See: 21 N.J.R. 2693(a), 22 N.J.R. 916(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A was readopted as R.1995 d.176. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY

1:6A-1.1 Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6:28. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

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

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

Case Notes

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

SUBCHAPTERS 2 THROUGH 3. (RESERVED)

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

1:6A-4.1 Notice of available legal service

(a) In its acknowledgement of a hearing request, the Department of Education shall inform the parties of any free or low-cost legal and other relevant services available, including:

1. The Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate;
2. The New Jersey State Bar Association and county bar association lawyer referral services;
3. The Association of Trial Lawyers—New Jersey lawyer referral service; and
4. The Legal Aid and Legal Services offices in New Jersey (34 CFR 300.506(c)).

Case Notes

Parent of handicapped child with no indicated need for special education did not have claim for transportation costs. *A.A. on Behalf of A.A., Jr. v. Cooperman*, 218 N.J.Super. 32, 526 A.2d 1103 (App.Div. 1987).

1:6A-4.2 Conference by the Department of Education

(a) Within seven days of receipt of any hearing request, the Department of Education shall conduct a conference at a time and place convenient to both parties.

(b) The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging information, stipulating facts and listing possible witnesses for a hearing. Mediation will be available at the conference if both parties agree to participate.

(c) If a settlement is reached, the terms shall be reduced to writing and signed by the parties and the representative of the Department of Education.

(d) If a settlement is not reached, the Department of Education representative shall prepare a written document at the conference that specifies the issues in dispute, any stipulations, and evidence and witness lists for each party. This document shall be included with the transmittal form and shall be immediately forwarded to the Office of Administrative Law. Copies of the written document and of the transmittal form shall be sent to the parties. Any exhibits that both parties agree are admissible may be attached to the document.

(e) The Department of Education shall include with the transmittal any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties.

(f) The board of education or public agency shall insure that a representative attends the conference. Participation by the parents or by an adult pupil is voluntary. However, if the parents or adult pupil do not attend the conference, they shall provide the Department of Education with a telephone number where they can be contacted at the time of the conference, so that dates for the hearing may be scheduled.

Amended by R.1990 d.405, effective August 6, 1990. See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

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

Case Notes

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

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

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

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

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

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

1:6A-4.3 Ongoing settlement efforts

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