

6A:14-2.3 Parental consent, notice, participation and meetings

(a) Consent shall be obtained:

1. Prior to conducting any assessment as part of an initial evaluation;

2. Prior to implementation of the initial IEP resulting from (a)1 above;

3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had

taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond;

4. Prior to the release of student records according to N.J.A.C. 6A:32;

5. Each time a district board of education seeks to access private insurance covering a student with a disability;

6. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;

7. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and

8. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).

(b) For a ward of the State, a district board of education must make reasonable efforts to obtain parental consent for an initial evaluation. If, after reasonable efforts, the parent cannot be found, or parental rights have been terminated, or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed, parental consent need not be obtained for an initial evaluation.

(c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. For those areas set forth in (a)1, 3 and 4 above, if a parent refuses to provide consent and the district and the parent have not agreed to other action, the district may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

(d) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.

(e) Written consent may be revoked by the parent, in writing, at any time.

1. Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.

2. If consent for services is revoked by the parent, the district board of education may file for a due process hearing.

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

1. Proposes to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student; or

2. Declines to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.

(g) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

1. A description of the action proposed or denied by the district board of education;

2. An explanation of why it is taking such action;

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

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

5. A description of any other factors that are relevant to the proposal or refusal by the district board of education;

6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and

7. In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:

i. Upon referral for an initial evaluation;

ii. Upon request by a parent; and

iii. When a request for a due process hearing is submitted to the Department of Education.

(h) Written notice according to (g) above shall be provided to the parent as follows:

1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;

2. The district of board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;

3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:

i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or

ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).

4. The district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the school district determine that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:

i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (g) above. Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.

ii. During the pendency of mediation or due process related to the disciplinary action the student shall be placed in accordance with 20 U.S.C. §1415(k) and N.J.A.C. 6A:14-2.8.

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding school holidays but not summer vacation.

i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination made within 20 calendar days, excluding school holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.

(i) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (g) above, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14), and due process hearing rules (N.J.A.C. 1:6A).

(j) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student.

(k) Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for notice of a meeting according to (g)7ii above and (k)3 through 5 below are met.

1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:

i. The parent;

ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;

iii. The student, where appropriate;

iv. At least one child study team member who participated in the evaluation;

v. The case manager;

vi. Other appropriate individuals at the discretion of the parent or school district; and

vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the school principal or designee if they choose to participate.

2. Meetings of the IEP team shall include the following participants:

i. The parent;

ii. Not less than one general education teacher of the student, if the student is or may be participating in the general education classroom;

(1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;

(2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;

(3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and

(4) The general education teacher shall assist in the determination of supplementary aids and services,

program modifications or supports for school personnel that will be provided for the student;

iii. Not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student;

(1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;

iv. At least one child study team member who can interpret the instructional implications of evaluation results;

v. The case manager;

vi. A representative of the responsible district who:

(1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;

(2) Is knowledgeable about the general education curriculum;

(3) Is knowledgeable about the availability of resources of the district board of education; and

(4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;

vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;

(1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;

viii. The student where appropriate;

ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and

x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.

3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.

4. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent(s) shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.

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

i. The notice of an IEP meeting shall inform the parents of the provisions in (k)2vii and (k)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.

ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:

(1) A purpose of the meeting will be the development of the transition services of the student; and

(2) The school district will invite the student;

iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:

(1) Indicate that a purpose of the meeting is the consideration of transition services for the student;

(2) Indicate that the school will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.

7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including, but not limited to:

i. Detailed records of telephone calls made or attempted and the results of those calls;

ii. Copies of correspondence sent to the parents and any responses received; and

iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.

9. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP

team member need not attend the meeting and the parent consents to such excusal in writing.

i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

10. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.

i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.

ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

(l) The following activities shall not be considered a meeting that requires parental participation:

1. Informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and

2. Preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.

1. An adult student shall be given notice and shall participate in meetings according to (a) through (k) above. The district board of education or the adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the adult student.

2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education

program and related services, or for release of records of an adult student shall be obtained from the adult student.

3. The district board of education shall provide any notice required under this chapter to the adult student and the parent.

4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.

(n) The New Jersey Department of Education shall disseminate the procedural safeguards statement to parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies.

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

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

In (f)5, added “, excluding school holidays, but not summer vacation” at the end.

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

In (i)2, rewrote ii(1) and iii(1); added (l).

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

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

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

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 regulation mandating provision of copy of procedural safeguards statement, including complaint procedures, to parents of special education students did not satisfy the federal regulatory requirements for dissemination of complaint procedures; federal regulations also required dissemination of statement at parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

While service providers may attend an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)2, which allows, at the discretion of the parents or district, other individuals to attend the IEP meeting who have “knowledge or special expertise regarding the student, including related ser-