

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

Student with multiple disabilities required extra year of special education due to chronic absenteeism. *G.K. v. Roselle Borough*, 95 N.J.A.R.2d (EDS) 86.

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

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

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

Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of

study was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. *Milt v. East Windsor Regional School District*, 9 N.J.A.R. 159 (1986).

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

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

#### 6:28-2.2 Surrogate parents

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

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

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

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

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

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

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

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

Reference to "responsible State agency" added throughout.

#### Case Notes

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

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

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

(a) Consent shall be obtained:

1. Prior to initial evaluation; and

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

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

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

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

2. Requests consent;

3. Plans to conduct a reevaluation; or

4. Approves or denies the written request of the parent(s) to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil.

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

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

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

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

i. An explanation of why it is taking such action; and

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

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

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

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

1. Evaluations of the pupil;

2. The determination of the pupil's eligibility for special education and/or related services;

3. The development of an individualized education program according to N.J.A.C. 6:28-3.6; and

4. The annual review.

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

1. Each meeting shall include the following participants:

i. The parent(s);

ii. Teacher(s) having knowledge of the pupil's educational performance;

iii. The pupil, where appropriate;

iv. At least one member of the child study team; and

v. Certified school personnel identifying the pupil as potentially educationally disabled, the school principal or designee and other appropriate individuals if they choose to participate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

#### Case Notes

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

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

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

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.

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

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

#### 6:28-2.4 Native language

(a) Written notice to the parent(s) and parent conferences required by this chapter shall be conducted in the

language used for communication by the parent and pupil unless it is not feasible to do so.

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

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

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

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

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

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

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

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

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

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

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

4. Be selected and administered;

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

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

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

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

7. Be conducted on an individual basis;

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

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

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

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

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

2. Any independent evaluation purchased at public expense shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

#### Case Notes

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

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

#### 6:28-2.6 Mediation

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

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

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

3. 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 pupils with educational disabilities; and

4. Each district board of education shall establish a mediation procedure consistent with this section.

(b) Mediation shall be provided as follows:

1. A request for mediation shall be made in writing to the superintendent of the local district, Child Study Supervisor of the Department of Education county office or the Director of the Division of Special Education, Department of Education with a copy to the other party. The mediation request shall specify the issue(s) in dispute and the relief sought;

2. A mediation conference shall be conducted within 20 calendar days after receipt of a written request at which time:

i. Issues shall be determined;

ii. Options explored; and

iii. Mediation attempts made within the confines of New Jersey law and code;

3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

i. Informal; and

ii. Held at a time and place reasonably convenient to the parties in the dispute;

5. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. 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 shall be made;

6. The mediator may terminate the mediation after at least one meeting if in his or her judgment the parties are not making progress toward resolving the issue(s) in dispute; and

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7(g).

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

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

Formerly titled "Due process hearings"; mediation procedures delineated.

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

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

In (a), added text regarding mediation for children below the age of three; in (b)7, corrected cross-reference.

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

#### Case Notes

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.

#### 6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the identification, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(b) The parent(s) or adult pupil may request a hearing after receiving written notice of a proposed or denied action or after 30 calendar days have elapsed from the date of a written request by the parent(s) or adult pupil for a change with regard to the pupil.

(c) The district board of education or public agency responsible for the development of the pupil's individualized education program may request a hearing when it is unable to obtain required consent to a proposed action and shall request a due process hearing if it denies the parent(s) or adult pupil's request for an independent evaluation.

(d) Due process hearings shall be conducted in the following manner:

1. A request for a due process hearing shall be made in writing to the Director of the Division of Special Education, Department of Education with a copy to the other party.

2. The Department of Education shall acknowledge receipt of the request and provide information regarding free and low cost legal services to the parent(s).

3. Upon receiving the Department of Education's acknowledgement, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A.

4. Within seven calendar days of receipt of the written request, the Department of Education shall conduct a conference.

- i. The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses. Mediation will be available at the conference if both parties agree to participate.

- ii. The district board of education shall ensure that the chief school administrator or his or her designee with the authority of the chief school administrator attends the conference.

iii. The conference shall be scheduled at a time and place reasonably convenient to the parties. Participation by the parent(s) is voluntary. Parent(s) may participate through the use of individual or conference calls.

iv. The conference may result in either settlement, withdrawal or transmittal to the Office of Administrative Law according to N.J.A.C. 1:6A.

v. If the conference results in settlement, the settlement shall be written and in compliance with New Jersey statute and rule.

vi. If the conference results in transmittal, the Department of Education representative will prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be immediately forwarded to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties. The Department of Education representative shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by a hearing officer at the request of either party. If the parent or adult pupil does not attend the conference and is not available by individual or conference call to schedule a hearing date, a date shall be assigned within the required timelines.

(e) Subject to adjournments granted by the hearing officer, a final decision shall be rendered not later than 45 days after the receipt of the request for a hearing.

(f) The decision of the administrative law judge is final, binding on both parties and to be implemented without undue delay, unless stayed according to N.J.A.C. 1:6A-5.4.

(g) Either party may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A. The request shall be supported by an affidavit. The applicant shall provide copies of the request to the other party.

1. Prior to transmittal of the hearing request to the Office of Administrative Law, application for emergency relief shall be made to the Director of the Division of Special Education, Department of Education. After transmittal of a request for a due process hearing, any application for emergency relief shall be made directly to the Office of Administrative Law.

(h) If the public agency responsible for implementing the individualized education program fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent(s). The request shall be made in writing to the Director of the Division of Special Education, Department of Education. On receipt of this request, implementation of the decision shall be assured according to Department of Education procedures.

(i) Pending the outcome of a due process hearing or any administrative or judicial proceeding, no change shall be made to the pupil'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 (g) above.

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

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

Defined types of matters which are cause for due process hearing; at (b) detailed nature and steps of conference; recodification and new (f) added.

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

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

In (a), added text regarding due process hearing for children under three; in (b), deleted "district board of education" and added "adult pupil" and criteria for requesting a hearing; in new (c), stated when a public agency may request a hearing. Added new (d), (e) and (f), and redesignated existing (c) through (f) as (g) through (j), with revisions to (h), (i), and (j).

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

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

At (j) changed to comply with 34 CFR 300.513(a).

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

#### Law Review and Journal Commentaries

Education—Administrative Law—Disabilities. Judith Nallin, 134 N.J.L.J. No. 15, 70 (1993).

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6:28-2.8 Disciplinary action

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

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

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

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

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

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

(e) When a pupil with an educational disability is suspended, the principal shall forward, at the time of suspension, written notification and a description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to suspension if this

action would result in the pupil being excluded for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1. Determine if the suspension results in a significant change in placement;
2. Document the review and the determination made; and
3. If the suspension or expulsion would result in a significant change in placement, the case manager shall:
  - i. Immediately advise the principal that a reevaluation shall be conducted prior to the suspension; and
  - ii. Initiate a reevaluation.

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

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

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

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

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

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

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

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

In (a), "district board of education . . . policies"; replaced (a)1. and 2. with text regarding "individualized education program"; replaced text in (b) through (e) with new evaluation standards; added new (f) and redesignated old (f) as (g); deleted old (g).  
Amended by R.1992 d.280, effective July 6, 1992.

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

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

## Case Notes

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

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.

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

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

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

## 6:28-2.9 Pupil records

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

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

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

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

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

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

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

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

New (c) added referencing "consent" rules.

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

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

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

## Case Notes

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

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

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

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

## 6:28-2.10 Least restrictive environment

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

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

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

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

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

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

6. Consideration is given to:

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

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

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

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

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

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

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

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability"; amended to comply with 34 CFR 300.550(b)(1), 300.553 and 300.512(c).

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

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

Amended by R.1994 d.334, effective July 5, 1994.

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

Amended by R.1995 d.228, effective May 1, 1995.

See: 27 N.J.R. 416(c), 27 N.J.R. 1792(a).

## Case Notes

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

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

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

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

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

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

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

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

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

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

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.*

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. *T.P. v. Mt. Olive Board of Education, 92 N.J.A.R.2d (EDS) 205.*

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

Day placement, not residential placement, was appropriate for multiply handicapped student. *J.B. v. Township of Montville Board of Education, 92 N.J.A.R.2d (EDS) 65.*

Record established that placement in program offered by school district was appropriate; no placement in out-of-state school. *H.S. v. Bloomfield Board of Education, 92 N.J.A.R.2d (EDS) 39.*

## SUBCHAPTER 3. SERVICES

## 6:28-3.1 Child study teams

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

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

- i. Consultation with school staff and parents; and
- ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

(b) A child study team shall consist of a school psychologist, a learning disabilities teacher-consultant and a school

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

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

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

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

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

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

New (d) added.

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

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

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

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

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

#### Law Review and Journal Commentaries

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

#### Case Notes

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

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

A guidance counsellor is not automatically a member of the child study team, which consists of the school psychologist, social worker and a learning disabilities teacher-consultant (citing former N.J.A.C. 6:28-1.3). Childs v. Union Twp. Bd. of Ed., 3 N.J.A.R. 163 (1980), affirmed per curiam Dkt. No. A-3603-80 (App.Div.1982).

#### 6:28-3.2 Identification

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

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

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

(d) Potentially educationally disabled pupils considered to require services beyond those available within the regular public school program shall be identified to the child study team.

(e) For a child who is identified to the district board of education at least 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if the pupil is determined to be eligible, develop and make available an individualized education program. This shall be completed not later than the date on which the child attains age three.

(f) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

(g) When identification of a potentially educationally disabled pupil is made by an individual other than the parent, the child study team shall make a determination whether or not to conduct an initial evaluation and provide the parent(s) with written notice of this determination within 30 days of the identification.

(h) Interventions in the regular public school program to alleviate educational problems shall be provided to the pupil unless the pupil's educational problem(s) is such that direct identification to the child study team can be supported and documented. Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. The parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.

(i) When parental consent for initial evaluation is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(j) The parent(s) may make a written request for an evaluation of his or her child which shall be forwarded to the child study team.

(k) Audiometric screening shall be conducted for every pupil identified to the child study team according to N.J.A.C. 6:29-5.

(l) Vision screening shall be conducted by the school nurse for every pupil identified to the child study team.

(m) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally disabled pupil for whom a district board of education is responsible, the district board of education shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent for initial evaluation according to this subchapter.

Amended by R.1985 d.209, effective May 6, 1985.

See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) Added text: "Children below age ... Department of Education."

(d) Added text: "Simultaneously with such ... through (h)."

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

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

Old (d) deleted, new (d) added regarding children who will be age three and who are enrolled in an early intervention program.

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

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

Added new (e) and changed deadlines for identifying determining eligibility.

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

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

Term "handicapped" changed to "disabled".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

#### Case Notes

Children suspected of having qualifying disability must be identified and evaluated within reasonable time. *W.B. v. Matula, C.A.3 (N.J.)1995, 67 F.3d 484.*

#### 6:28-3.3 (Reserved)

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

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

Recodification and new (c) requiring written request, new (e) regarding vision screening for all pupils referred and at (f) added minimum requirement of observation and within 30 days.

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

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

References to "district board of education" changed for consistency throughout.

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

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

Term "handicapped" changed to "disabled".

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

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

Section was "Referral".

#### 6:28-3.4 Evaluation

(a) Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate.

(b) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay consistent with the time-lines established in N.J.A.C. 6:28-2.1 and shall include assessment in all areas of the suspected disability.

(c) The chief school administrator or designee shall request that the parent(s) provide information to the child study team to be considered as part of the evaluation data.

(d) An initial evaluation shall consist of an assessment by a school psychologist, a learning disabilities teacher-consultant, a school social worker and a physician employed by the school. The child study team evaluation shall include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the child study team member reporting. Each initial evaluation of the pupil by the child study team shall:

1. Consider the requirements for eligibility for special education and/or related services;
2. Be used to determine instructional needs of the pupil;
3. Consider any relevant medical condition in evaluating the pupil's instructional needs;
4. Include pertinent information from the pupil's parent(s), the pupil's teacher(s) and other relevant persons;
5. Include, where appropriate, or required, the use of a standardized test(s) which shall be:
  - i. Individually administered;
  - ii. Valid and reliable;
  - iii. Normed on a representative population; and
  - iv. Scored as either standard scores with a standard deviation or norm referenced scores with a cutoff score; and
6. Include functional assessment as follows:
  - i. A minimum of one structured observation by each child study team member in other than a testing session;
  - ii. An interview with the pupil's parent(s);
  - iii. An interview with the teacher(s) identifying the potentially educationally disabled pupil;
  - iv. A review of the pupil's developmental/educational history including records and interviews;
  - v. A review of interventions documented by the classroom teacher(s) and others who work with the pupil; and
  - vi. One or more informal measure(s) which may include, but not be limited to:
    - (1) Surveys and inventories;
    - (2) Analysis of work samples;
    - (3) Trial teaching;
    - (4) Self report;
    - (5) Criterion referenced tests;

- (6) Curriculum based assessment; and
- (7) Informal rating scales.

(e) Each initial evaluation shall include the following assessments:

1. A comprehensive health appraisal for pupils ages three through 21 shall be performed by a physician employed by the district board of education.

i. The comprehensive health appraisal shall include, but not be limited to, an assessment of prenatal, perinatal and postnatal factors, as well as developmental and early childhood illnesses and injuries and a review of health screenings.

ii. The physician employed by the district board of education shall examine the pupil, including all body systems, and write a summary indicating the effect of any current health problem or medical treatment on the pupil's learning.

iii. If the parent(s) of the pupil chooses to employ a private physician, a report of this comprehensive health appraisal shall be completed on a form developed by the school physician.

iv. The school nurse shall review and summarize all other available health information regarding the pupil and transmit it to the child study team.

2. A psychological assessment shall be the responsibility of a school psychologist employed by the district board of education and shall include an appraisal of the current cognitive, social, adaptive and emotional status of the pupil.

3. An educational assessment shall be the responsibility of a learning disabilities teacher-consultant employed by the district board of education and shall include an evaluation and analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be the responsibility of a school social worker employed by the district board of education and shall include an evaluation of the pupil's adaptive social functioning and emotional development and of the family, social and cultural factors which influence the pupil's learning and behavior in the educational setting. The social assessment shall include communication with the pupil and his or her parent(s).

5. For children ages three to five, a speech and language assessment shall be the responsibility of a speech correctionist or speech-language specialist employed by the district board of education. The assessment shall include observation of the pupil, communication with the parent(s) and an evaluation and analysis of speech and language development.

(f) The child study team members shall prepare written reports of the results of each of their assessments. The reports must include a statement regarding relevant behavior noted during the observation of the pupil and the relationship of that behavior to the pupil's academic functioning.

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

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

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

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

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

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

(j)4 added.

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

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

Old (c) deleted, remaining text recodified and requirement added at (d)5. regarding speech language assessment of three to five year olds.

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

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

Revisions made to (a), (f) and (h).

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6:28-3.5 Determination of eligibility

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

1. Determine whether the pupil is eligible for special education and/or related services; and
2. If eligible, determine a single classification category as defined in (c) below.

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

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

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

1. A teacher having knowledge of the pupil's educational performance;
2. Another speech correctionist or speech-language specialist; or
3. Other school personnel qualified to provide or supervise special education.

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary, signed by

the child study team, of all decisions and any recommended course(s) of action.

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

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

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

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

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

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

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

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

iii. Onset in infancy or childhood.

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

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

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

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

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

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

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

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

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

(1) The quality and rate of learning;

(2) The use of symbols for the interpretation of information and the solution of problems;

(3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

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

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

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

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

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

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

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

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

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

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

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

10. "Orthopedically handicapped" means a condition which, because of malformation, malfunction or loss of

bones, muscle or body tissue, necessitates special education and/or related services. An evaluation by a physician qualified to conduct an orthopedic evaluation is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised definitions of "chronically ill" and "eligible for day training". Amended by R.1991 d.337, effective July 1, 1991.

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

Definition of "Autistic" added.

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

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

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

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

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

#### Case Notes

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

Recommended placement in preschool handicapped program satisfied requirement for an "appropriate" education. *Fuhrmann on Behalf*

of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

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

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

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

Student 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'Levy v. Bd. of Ed., Deptford Twp., Gloucester Cty., 1972 S.L.D. 641.

### 6:28-3.6 Individualized education program

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

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

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

1. For pupils classified eligible for speech-language services, the meeting shall include the same participants as required by N.J.A.C. 6:28-3.5(b). When appropriate, the pupil shall attend the meeting.

2. Other certified school personnel and the principal or designee may participate in the meeting.

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

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

1. A statement of the pupil's eligibility for special education and/or related services;

2. A statement of current educational status, which describes the pupil's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;

3. A statement of annual goals which describes the educational performance expected to be achieved under the pupil's individualized education program. Annual goals shall be related to the special education and/or regular education curriculum;

4. A statement of objectives which describes specific measurable steps between the current educational status and the annual goals; and

5. A description of the pupil's educational program which includes:

i. A rationale for the type of educational program and placement selected;

ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs;

iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of a pupil with an educational disability in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the regular education program shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil;

iv. A description of exemptions from regular education program options including testing programs, core course proficiencies and State and local graduation requirements which includes a rationale for the exemptions;

v. Reasons why the individualized education program goals and objectives do not include the proficiencies measured by the High School Proficiency Test and the requirement to demonstrate mastery of curriculum proficiencies for pupils exempted from these requirements;

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

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

(1) Instruction;

(2) Community experiences;

(3) The development of employment and other post-school adult living objectives; and

(4) If appropriate, acquisition of daily living skills and functional vocational evaluation.

viii. If the participants in the individualized education program meeting determine that transition services shall not be needed in one or more of the specified areas in (d)5vii(1) through (3) above, the individualized education program shall include a state-

ment to that effect and the basis upon which the determination was made.

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

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

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

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

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

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

xv. Any specialized equipment or materials;

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

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

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

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

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

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

(g) Signatures of those persons who participated in the development of the individualized education program shall

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

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

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

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

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

(e)5ii(1): deleted text and substituted new.  
Amended by R.1987 d.358, effective September 8, 1987.  
See: 19 N.J.R. 1033(b), 19 N.J.R. 1641(c).

Added new (e)5v and vi; renumber old v.-ix. to vii.-xi.  
Amended by R.1989 d.239, effective May 15, 1989.  
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

IEP process language simplified, reference to governing N.J.A.C. cite added, requirement to provide transition preparation for pupils age 14 or over added at (c)5., vii. and old (l) replaced with new language.  
Amended by R.1990 d.450, effective September 4, 1990.  
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Revisions made throughout the section the provision of meetings for determining IEPs and the conduct of such meetings.  
Administrative correction to (c): changed "the" to "a".  
See: 23 N.J.R. 59(c).

Amended by R.1992 d.280, effective July 6, 1992.  
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Amended to streamline the IEP requirements for pupils classified eligible for speech-language services; clarified that post secondary outcomes shall be components in IEPs for pupils 14 and above; recodifications; amendments to comply with 34 CFR 300.344.

Amended by R.1994 d.127, effective April 4, 1994.  
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).  
Amended by R.1994 d.334, effective July 5, 1994.  
See: 26 N.J.R. 1422(a), 26 N.J.R. 2787(a).

#### Cross References

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

#### 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 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 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 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.

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 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 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 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 v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

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).

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.

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.

### 6:28-3.7 Reevaluation

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

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized

education program. The reevaluation shall include assessment by at least two members of the child study team.

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

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

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

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

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

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

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

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

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

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

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

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

Added required assessments for autistic pupils.

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

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

Corrected internal cites.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6:28-3.8 Related services

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

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

i. Counseling services for a pupil with an educational disability shall be provided within the public schools during the school day by certified school psychologists, social workers or guidance counselors; and

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

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

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

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

3. Recreation shall be provided by certified school personnel.

4. Speech and language services for a pupil classified as other than "eligible for speech-language services", may be provided as a related service. Additional classification as "eligible for speech-language services" is not required.

5. Transportation shall be provided in the following manner:

i. The district board of education shall provide transportation as required in the individualized education program or as prescribed by the school physician. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school;

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school;

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a pupil assigned; and

iv. For handicapped pupils below the age of five, safety belts or restraint systems are required; and

6. Other related services as specified in the pupil's individualized education program.

(b) School personnel may give advice to parents regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

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

Recodified from N.J.A.C. 6:28-3.7, added references to "speech-language services".

Amended by R.1992 d.280, effective July 6, 1992.  
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

#### Case Notes

Free and appropriate education in public school precluded tuition and transportation for non-approved private school. *A.S. v. Hasbrouck Heights*, 95 N.J.A.R.2d (EDS) 162.

Student with breathing difficulties in cold weather not entitled to transportation during winter months. *A.G. v. Glen Ridge Board*, 95 N.J.A.R.2d (EDS) 144.

Transportation from home to private sectarian school which disabled students attended by parental choice was not available. *A.K. v. Teaneck Board*, 95 N.J.A.R.2d (EDS) 116.

Demand that the Board of Education pay the cost of one-to-one aides for a 20-year old student with cerebral palsy and mental retardation was dismissed. *D.R. v. East Brunswick Board of Education*, 94 N.J.A.R.2d (EDS) 145.

Private nursing care; not a related service under the Individuals with Disabilities Act. *L.M. v. East Brunswick Township Board of Education*, 94 N.J.A.R.2d (EDS) 79.

"Repositioning" following surgery was "related service" for 6-year-old child suffering from cerebral palsy. *M.S. v. Barnegat Township Board of Education*, 93 N.J.A.R.2d (EDS) 16.

Summer placement at private school was necessary related service for 18-year-old student. *C.M. v. Cherry Hill Board of Education*, 92 N.J.A.R.2d (EDS) 156.

Board of education not required to provide outside psychotherapy; counseling could be provided within school during school day. *Clifton Board of Education v. M.L.*, 92 N.J.A.R.2d (EDS) 60.

#### 6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services according to N.J.A.C. 6:28-3.2 through 3.7.

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:3-6; and

2. Facilitate the entry of the pupil into the local district program, as appropriate.

(c) For a pupil in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.

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

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

Recodified from N.J.A.C. 6:28-3.8.

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

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

N.J.A.C. reference corrected in (a).

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

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

## SUBCHAPTER 4. PROGRAMS

### 6:28-4.1 General requirements

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

(b) Special education programs shall be consistent with the special education plan submitted by the district board of education and approved by the Department of Education.

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

(d) Appropriate written curricula shall be developed and appropriate materials shall be provided for pupils with educational disabilities.

(e) The length of the school day and the academic year of programs for pupils with educational disabilities shall be at least as long as that established for all pupils.

1. Programs for the preschool handicapped shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of pupil instruction.

2. An extended academic year program shall be comparable to the special education program offered during the regular academic year.

3. Educational programs for pupils classified as eligible for day training shall operate extended school year programs.

(f) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county office.

(g) Physical education services, specially designed if necessary, shall be made available to every pupil with an educational disability age five through 21, including those pupils in separate facilities.

(h) When a pupil with an educational disability transfers from one New Jersey school district to another, or when a pupil classified as educationally disabled by a State or local school district outside of New Jersey transfers into a New Jersey school district, and immediate review of the classification and individualized education program cannot be conducted, the pupil shall be immediately placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days.

(i) When the individualized education program of a pupil with an educational disability does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics, and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of pupils with educational disabilities, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-4 through 16 and this chapter.

(k) Each district board of education shall ensure that all pupils with educational disabilities have available to them the variety of educational programs and services available to nondisabled pupils.

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

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

Requirement for physical education services added; at (h) instructions for immediate placement of transfers added; limit of group size in classes in fine arts, music, home economics, sports etc. and new (k) added ensuring variety of programs.

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

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

Reference to vocational education deleted in (i)1.

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

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

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Administrative Correction.

See: 25 N.J.R. 4743(b).

#### Case Notes

Former standard of service for local school bds. incorporated into the Federal Education of the Handicapped Act. Bd. of Educ. of E. Windsor Regional School v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Regulatory description of appropriate educational program being one in the least restrictive environment found to mean least even in which educational progress rather than regression can take place. Bd. of Educ. of E. Windsor Regional School District v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Focus in determining appropriateness of program is on program offered. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Services of education expert for special education child with maladaptive behavior were no longer necessary. Services of B.L. v. Englewood City Board, 95 N.J.A.R.2d (EDS) 125.

Student with multiple disabilities required extra year of special education due to chronic absenteeism. G.K. v. Roselle Borough, 95 N.J.A.R.2d (EDS) 86.

Placement out-of-district was not appropriate for handicapped child when opportunities in district were equal. L.A. v. Union County, 95 N.J.A.R.2d (EDS) 78.

Provision of all special education services based upon 180-day school year. S.M. v. Township Board of Education, 94 N.J.A.R.2d (EDS) 176.

Residential school placement; behavioral problems manifested only in the home environment. R.W. v. Howell Township Board of Education, 94 N.J.A.R.2d (EDS) 39.

Multiply handicapped student; transportation by bus company other than one retained by school board. N.S. v. Trenton Board of Education, 94 N.J.A.R.2d (EDS) 36.

Removal of an emotionally disabled child from a private school and placing him in public school was not detrimental. In the Matter of J.C., 94 N.J.A.R.2d (EDS) 15.

Placement of an emotionally handicapped and learning disabled child in a special education program was warranted. Ewing Township Board of Education v. J.R., 94 N.J.A.R.2d (EDS) 11.

Constant attention by a registered or licensed practical nurse required by a severely handicapped student was a medical need. C.F. v. Roxbury Township Board of Education, 94 N.J.A.R.2d (EDS) 6.

School board would not be liable for expenses of student's attendance at private unapproved placement. C.D. v. Wanaque Board of Education, 93 N.J.A.R.2d (EDS) 304.

Program provided by school board; appropriate for child's learning disability. J.M. v. Manville Bd. of Educ., 93 N.J.A.R.2d (EDS) 100.

Board of education had appropriately addressed visually impaired 19-year-old's educational, occupational therapy, mobility and other needs; no obligation to provide special education services following graduation. *L.I. v. Montville Board of Education*, 93 N.J.A.R.2d (EDS) 1.

Changing placement of 10-year-old Downs Syndrome student to in-district special education class was not warranted. *Lakewood Board of Education v. M.C.*, 92 N.J.A.R.2d (EDS) 244.

Petitioners' action to require local school board to pay residential costs and tuition retroactively denied. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

Regulations contain standards for provision of remedial and auxiliary services to non-public school students; future contract for such services forbidden due to contractor's financial standing and fiscal practices. *New Jersey Education Assn. v. Essex Cty. Educational Services Commission*, 5 N.J.A.R. 29 (1981).

### 6:28-4.2 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities ages three through 21. Educational program options include the following:

1. Instruction in a regular class with all necessary and appropriate supports including, but not limited to, the following:

- i. Curricular or instructional modifications;
- ii. Supplementary instruction;
- iii. Speech-language services;
- iv. Resource center programs;
- v. Assistive technology including environmental adaptations;
- vi. Specialized instructional strategies;
- vii. Teacher aides; and
- viii. Related services.

2. A special class program in the pupil's local school district;

3. A special education program in the following settings:

- i. Another local school district;
- ii. A vocational and technical school;
- iii. A county special services school district;
- iv. An educational services commission; and
- v. A jointure commission;

4. Programs in hospitals, convalescent centers or other medical institutions;

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

6. Vocational rehabilitation facilities;

7. An approved private school for the handicapped in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in an approved private school for the handicapped shall only be made with the prior written approval of the Department of Education through its county office;

8. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for a pupil with an educational disability according to N.J.A.C. 6:28-4.5;

9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5;

10. Instruction in other appropriate settings according to N.J.A.C. 6:28-1.1(d) and (e); and

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

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

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

Referenced "private school for handicapped", deleted "privately operated special class".

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

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

New (a)9 added, an accredited nonpublic school.

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

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

Added new (b); the three program options available for preschool handicapped pupils.

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

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

Changes to reflect the change from "resource room" to "resource center program".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

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

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

Amended by R.1995 d.228, effective May 1, 1995.

See: 27 N.J.R. 416(c), 27 N.J.R. 1792(a).

### Case Notes

Former N.J.A.C. 6:28-4.3 upheld. *D.S. v. Bd. of Ed., East Brunswick Twp.*, 188 N.J.Super. 592, 458 A.2d 129 (App.Div.1983), certification denied 94 N.J. 529, 468 A.2d 184 (1983).

Jurisdiction of Juvenile and Domestic Relations Court to place a pupil in an appropriate educational program. *State in Interest of F.M.*, 167 N.J.Super. 185, 400 A.2d 576 (J.D.R.Ct.1979).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Record supported classification of child as neurologically-impaired; placement in one ½ day kindergarten class and one ½ day 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.

Mainstreaming sixth grade student for remainder of school year not shown to be appropriate. *D.E. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 116.

Out-of-state residential school appropriate placement for 16-year-old boy who was auditorily and emotionally impaired. *J.P. v. Metuchen Board of Education*, 92 N.J.A.R.2d (EDS) 110.

Placement of child was inappropriate to meet his educational needs; parents entitled to private school tuition reimbursement. *J.S. v. Livingston Board of Education*, 92 N.J.A.R.2d (EDS) 94.

Individualized Education Plan recommending that perceptually impaired student be educated at public middle school was appropriate. *Passaic Board of Education v. E.G.*, 92 N.J.A.R.2d (EDS) 86.

Morning preschool handicapped class placement sufficient. *M.G. v. East Brunswick Board of Education*, 92 N.J.A.R.2d (EDS) 84.

i. Evaluation, determination of eligibility for special education and/or related services, classification and the development of an individualized education program;

ii. Supplementary instruction, speech correction and home instruction for pupils determined eligible for such services; and

iii. English as a second language according to N.J.A.C. 6:31-1.4 and compensatory education according to N.J.A.C. 6:8-1 for pupils eligible for such services.

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

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

1. A request for approval to purchase services shall include the proposed terms of the contract;

2. The district board of education shall be notified of approval or disapproval within 30 calendar days of the request; and

3. The approval shall be for one year.

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

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

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

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

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

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

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

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

Added home instruction to contracted services.

#### Case Notes

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

#### 6:28-5.2 Approval procedures

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

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits

required by ordinances in effect within the state, county or municipality where the clinic or agency provides its services shall be provided;

2. A description of the scope and nature of services to be offered;

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

i. All staff shall be appropriately certified or licensed;

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

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

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

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

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

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

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

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

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

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

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

Reference added making approval on annual procedure.

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

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

Amended to improve the monitoring of clinics and agencies.

## SUBCHAPTER 6. SERVICES IN NONPUBLIC SCHOOLS

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

(a) The district of residence, as required by Federal law and regulation, shall maintain responsibility for providing a free, appropriate public education for pupils enrolled in nonpublic schools.

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

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

Amended by R.1985 d.209, effective May 6, 1985.

See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) added text: "located within the district."

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

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

Reference to Statutory requirements and Federal law and regulation.

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

Unilateral decision to place the child in a private school; no tuition reimbursement. C.R. v. Delaware Valley Regional School District, 92 N.J.A.R.2d (EDS) 31.

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

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

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

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

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

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

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

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

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

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

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

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