

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.

“Adaptive behavior” means the ability to demonstrate personal independence and social responsibility according to age and sociocultural group expectations.

“Adult pupil” means an emancipated minor or a person age 18 through 21, who is or was enrolled in the public school and who is not under legal guardianship.

“Approved private school for the handicapped” means an incorporated entity approved by the Department of Education according to N.J.A.C. 6:28-7.2 or 7.3 to provide special education and related services to pupils with educational disabilities placed by the district board of education responsible for providing their education.

“Consent” means that a parent having legal responsibility for educational decision making or the adult pupil has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; understands and agrees in writing to the implementation of this activity; and understands that the granting of consent is voluntary and may be revoked at any time.

“Department of Education” means the State Board of Education, the Commissioner of Education or its/his/her designee.

“Individualized education program” means a written plan developed at a meeting according to N.J.A.C. 6:28-3.6 which sets forth goals and measurable objectives and describes an integrated, sequential program of individually designed educational activities and/or related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the pupil’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

“Native language” means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language.

“Nonpublic school” means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades, in which a pupil age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

“Nonpublic school pupil” means any pupil who is enrolled full time in a nonpublic school. A pupil who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent(s) resides.

“Parent(s)” means the natural parent(s), the legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil’s welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

“Pupil” means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

“Pupil age” means the school age of a pupil as defined by the following:

1. “Age three” means the attainment of the third birthday. Children attaining age three shall have a free, appropriate public education available to them provided by the district board of education.

2. “Age five” means the attainment of age five by the month and day established as the kindergarten entrance cut off date by the district board of education. Pupils with educational disabilities attaining age five during the school year shall continue to be provided preschool services for the balance of that school year.

3. “Age 21” means the attainment of the twenty-first birthday by June 30 of that school year. Pupils with educational disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

“Pupil with an educational disability” means a pupil who has been determined to be eligible for special education and/or related services according to N.J.A.C. 6:28-3.5.

“Recreation” for pupils with educational disabilities means instruction to enable the pupil to participate in appropriate leisure time activities, including involvement in recreation programs offered by the district board of education and the facilitation of a pupil’s involvement in appropriate community recreation programs.

“Related services” for pupils with educational disabilities means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, rehabilitation counseling, school nursing services, social work services, transportation, as well as any other appropriate developmental corrective and supportive services required for a pupil to benefit from education as required by the pupil’s individualized education program.

“Special education” means specially designed instruction to meet the educational needs of pupils with educational disabilities including, but not limited to, subject matter instruction, physical education and vocational training.

“Transition services” means a coordinated set of activities for a pupil with educational disabilities, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

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

Definitions to be consistent with Federal Act; deleted “least restrictive environment”, “parental consent” and “preschool”; added “adult pupil”, “approved private school for the handicapped”, “consent”, “nonpublic school” and “nonpublic school pupil”.

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

In "Consent", added "legal responsibility for educational decision making".

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

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

Amended to change the definition of age three to the attainment of the third birthday.

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

Failure to gain timely approval for child study team does not defeat tenure rights gained in interim (citing former regulation). *Bisson v. Bd. of Ed., Alpha Boro., Warren Cty., 1978 S.L.D. 187.*

Definition of handicapped child under former N.J.A.C. 6:28-1.2. *T.A. v. Bd. of Ed., Edgewater Park Twp., Burlington Cty., 1973 S.L.D. 501.*

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of pupils with educational disabilities from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8;
2. Prevention of needless public labeling of pupils with educational disabilities;
3. Compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-6;
4. Identification, location and evaluation of potentially educationally disabled pupils;
5. Provision of full educational opportunity to pupils with educational disabilities;
6. Participation of and consultation with the parent(s) of pupils with educational disabilities toward the goal of providing full educational opportunity to all pupils with educational disabilities ages birth through 21;
7. Provision of special services to enable pupils with educational disabilities to participate in regular educational programs to the maximum extent appropriate;
8. Development and implementation of individualized education programs according to N.J.A.C. 6:28-3.6 and 3.7;
9. Protection of pupils' rights in regard to evaluation and reevaluation procedures according to N.J.A.C. 6:28-2.5;
10. Placement of pupils with educational disabilities in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(d)5, and 4.1(i); and

11. Establishment and implementation of procedural safeguards according to N.J.A.C. 6:28-2.3, 2.6, and 2.7.

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).

In (a)1, deleted reference to 6:39-1.6.

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

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.*

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.*

SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

6:28-2.1 General requirements

(a) Each district board of education shall provide a free, appropriate public education program and related services for pupils with educational disabilities in the least restrictive environments according to N.J.A.C. 6:28-1.1(b)1.

(b) When a pupil with an educational disability between the ages of 16 and 21 voluntarily, and before receiving a high school diploma, leaves a public school program, he or she may reenroll at any time up to and including the school year of the pupil's twenty-first birthday.

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days, evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the individualized education program for the pupil shall be completed.

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

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

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

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

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

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

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

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

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

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

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

At (c)2., 30 day time frame required; 90 day option deleted.
Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

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

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

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

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

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

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

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

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

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

6:28-2.2 Surrogate parents

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

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

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

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

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

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

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

Reference to "responsible State agency" added throughout.

Case Notes

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

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

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

(a) Consent shall be obtained:

1. Prior to initial evaluation; and
2. Prior to initial implementation of a special education program and/or related services resulting from (a)1. above.
 - (b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that identification.
 - (c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:
 1. Proposes or declines to initiate or change the identification, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;
 2. Requests consent;
 3. Plans to conduct a reevaluation; or
 4. Approves or denies the written request of the parent(s) to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil.
 - (d) Written notice, according to (c)1 through 4 above, shall be provided to the parent(s) no later than 15 calendar days after making a determination and in no event less than 15 calendar days prior to the date for implementation, unless the parent(s) otherwise consents. If the parent(s) consents to implementation before the 15 days have elapsed, documentation of such consent shall be maintained.
 - (e) On receipt of any written parental request, written notice shall be provided to the parent(s) within 30 calendar days.
 - (f) Notice shall be written in language understandable to the general public and shall include:
 1. A description of the action proposed or denied by the district board of education including:
 - i. An explanation of why it is taking such action; and
 - ii. A description of any options the district board of education considered and the reasons why those options were rejected;
 2. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action; and

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

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

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

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

1. Each meeting shall include the following participants:
 - i. The parent(s);
 - ii. Teacher(s) having knowledge of the pupil's educational performance;
 - iii. The pupil, where appropriate;
 - iv. At least one member of the child study team; and
 - v. Certified school personnel identifying the pupil as potentially educationally disabled, the school principal or designee and other appropriate individuals if they choose to participate.
2. Parent(s) shall be notified in writing of meetings early enough to ensure that they will have an opportunity to attend.
3. Meetings shall be scheduled at a mutually agreed upon time and place.
4. Notice of meetings shall indicate the purpose, time, location and participants.
5. If the parent(s) cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation, including the use of individual or conference telephone calls. Documentation shall be maintained of all attempts to secure parental participation.
6. A meeting may be conducted without the parent(s) in attendance if the district board of education is unable to secure the participation of that parent(s).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6:28-2.8 Disciplinary action

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

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

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

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

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

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

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

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

2. Document the review and the determination made; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

6:28-2.9 Pupil records

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

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

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

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

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

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

New (c) added referencing "consent" rules.
Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

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

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

Case Notes

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

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

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

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

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;

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 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. *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 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 deciding to place 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.

Individuals with Disabilities Education Act imposes obligations on school districts regarding placement of disabled children in regular classrooms. *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.

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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 3. SERVICES

6:28-3.1 Child study teams

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

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

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

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

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

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

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

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

New (d) added.

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be

identified, located and evaluated through programs operated by or through contracts under the responsibility of the Department of Health according to P.L. 1992, c.155.

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

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

Recodified from N.J.A.C. 6:28-4.2(c) and expanded details of process by which county office grants exceptions.

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

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

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

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

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

6:28-4.7 Transition

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

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

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

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

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

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

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

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

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

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

other steps to obtain the participation of the other agency in the planning of any transition services.

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

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

Recodified from N.J.A.C. 6:28-4.3.

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

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

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

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

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

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

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

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

6:28-4.8 Diplomas and graduation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 5. APPROVED CLINICS AND AGENCIES

6:28-5.1 General requirements

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

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

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

1. For public school pupils:
 - i. Independent child study team evaluations and/or child study team diagnostic services to supplement existing local district services;
 - ii. The related services of occupational therapy and physical therapy; and
 - iii. Home instruction.
2. For nonpublic school pupils:
 - i. Evaluation, determination of eligibility for special education and/or related services, classification and the development of an individualized education program;
 - ii. Supplementary instruction, speech correction and home instruction for pupils determined eligible for such services; and
 - iii. English as a second language according to N.J.A.C. 6:31-1.4 and compensatory education according to N.J.A.C. 6:8-1 for pupils eligible for such services.
3. Medical clinics and agencies approved by the New Jersey Department of Health or appropriate State agencies outside of New Jersey may conduct diagnostic medical services. These agencies do not have to obtain Department of Education approval nor do district boards of education have to receive prior approval of the Department of Education to purchase diagnostic medical services.

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

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

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

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

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

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

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

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

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

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

Added home instruction to contracted services.

Case Notes

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

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

6:28-5.2 Approval procedures

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

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;
3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill;
 - i. All staff shall be appropriately certified or licensed;
 - ii. All educational certificates shall be recorded with the Department of Education through the county office in which the clinic or agency is located;

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

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

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

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

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

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

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

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

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

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

Reference added making approval on annual procedure.

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

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

Amended to improve the monitoring of clinics and agencies.

SUBCHAPTER 6. SERVICES IN NONPUBLIC SCHOOLS

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

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

(b) The district board of education in which the nonpublic school is located shall provide to nonpublic school pupils

the programs and services required by this subchapter by itself, or through joint agreements with other district boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6:28-5.

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

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

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

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

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

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

Reference to Statutory requirements and Federal law and regulation.

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

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

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

Case Notes

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

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

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

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

Neighborhood school with separated first grade classes was most appropriate placement for perceptually impaired student whose attention was easily distracted. I.M. v. Atlantic City Board, 95 N.J.A.R.2d (EDS) 250.

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

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

Educational placement out of district was appropriate for perceptually impaired student's educational needs despite parent's noncooperation. P.M. v. Brick Township Board, 95 N.J.A.R.2d (EDS) 201.

School district was required to provide reimbursement for occupational therapy given neurologically impaired child to replace that which she should have received while domiciled in school district. G.K. v. Cherry Hill Board, 95 N.J.A.R.2d (EDS) 197.

Residential placement for multiply handicapped child with various diagnosed disorders ranging from loving to potentially injurious was only appropriate placement in least restrictive environment. Z.D. v. Fort Lee Board v. 95 N.J.A.R.2d (EDS) 193.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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