

(d) Each board of education of the district in which the nonpublic school is located shall receive State aid for programs and services required by this subchapter for the succeeding school year as available from appropriated funds for nonpublic school programs and services.

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

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

In (b), amended NJAC reference.

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

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

In (b), substituted "6A:23" for "6A:23-2".

#### Case Notes

Teacher did not accrue secondary seniority credits by providing statutorily mandated services in public school to parochial students. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

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.*

Chapter 193 (N.J.S.A. 18A:46-19.1 et seq.) funds may be used for administrative costs. Indeed, funding for administrative costs must come from Chapter 193 funds; public school and educational services entities may not subsidize the costs of nonpublic programs by diverting funds for or from other public educational programs (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

Statutes governing educational services commissions and the interpretative case law provide for collection of all costs with respect to the provision of remedial and auxiliary services to school districts (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

Department of Education's denial of reimbursement of administrative expenses out of Chapter 193 funds, after permitting, whether consciously or by inaction, such payments for approximately 25 years, constituted an administrative rule that should have been promulgated pursuant to the Administrative Procedures Act (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

#### 6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Annually, the board of education shall submit to the Department of Education a report describing the programs and services provided under this subchapter.

(b) The end of the year report shall include the numbers of nonpublic school students provided each program or service and such other information as may be required by the Department of Education.

#### Case Notes

Requirements of regulations under Individuals with Disabilities Act (IDEA) that each state have on file with Secretary of Education description of how "child find" policies and procedures will be monitored to

ensure that the state educational agency (SEA) obtained information on number of children identified within each category of disability, information adequate to evaluate effectiveness of those policies and procedures, and description of method used by state to determine which children were receiving special education and related services were not met by state regulations merely mandating that each school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations which failed to include portions of the Individuals with Disabilities Education Act (IDEA) or its regulations setting forth filing requirements in connection with "child find" requirements were impermissibly inconsistent with federal standard, despite state's contention that filing requirements applied only to state and not to local school districts, where result of failure to incorporate federal standard in regulations was lack of public awareness of applicable standards and how standards were applied. *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of students with disabilities

(a) According to N.J.S.A. 18A:46-14, school age students with disabilities may be placed in accredited nonpublic schools which are not specifically approved for the education of students with disabilities with the consent of the Commissioner of Education, by an order of a court of competent jurisdiction, or by order of an administrative law judge as a result of a due process hearing. Preschool age students with disabilities may be placed by the district board of education in early childhood programs operated by agencies other than a district board of education according N.J.A.C. 6A:14-4.3(d) or by an administrative law judge as a result of a due process hearing.

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the on-going, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a through h cannot be provided to this student;

3. The most appropriate placement for this student is this nonpublic school;

4. The program to be provided shall meet the requirements of the student's individualized education program;

5. The student shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c through g. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Statewide assessment and graduation requirements shall apply. Participation in Statewide assessment and/or exemptions from graduation requirements shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.7(e)7 and 9.

i. All personnel providing either special education programs according to N.J.A.C. 6A:14-4.4 through 4.7, or related services according to N.J.A.C. 6A:14-3.9 shall hold the appropriate educational certificate and license, if one is required, for the position in which they function;

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting authority;

iii. All substitute teachers and aides providing special education and related services shall be employed according to applicable rules at N.J.A.C. 6A:9-6.5, N.J.A.C. 6A:32-4.7 and this chapter;

6. The student shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, N.J.A.C. 6A:8-3.1, and N.J.A.C. 6A:14-1 through 4. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Exemptions shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.7(e)7 and 9;

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and Federal antidiscrimination statutes;

9. Written notice has been provided to the student's parent regarding this placement which has included a statement that:

i. The nonpublic school is not an approved private school for students with disabilities and that the local school district assumes the ongoing monitoring responsibilities for the student's program;

ii. No suitable special education program could be provided to this student pursuant to N.J.S.A. 18A:46-14; and

iii. This is the most appropriate placement available to this student;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6A:14, 1:6A and 6A:32.

(c) In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the administrative law judge assigned to the case when:

1. The administrative law judge makes a factual determination that the certifications in (b) above are met; or

2. The district board of education and the parent agree to a settlement of the matter which would include place-

ment under N.J.S.A. 18A:46-14 and the administrative law judge approves the settlement. Approval may be granted if the district board of education makes the certifications in (b) above. A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through the county office.

(d) The district board of education shall be responsible to monitor the student's placement at least annually to ensure the program's compliance with the certifications.

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

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

In (a), inserted "of Education" following "Commissioner"; and added references to placement of students by order of an administrative law judge as a result of a hearing.

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

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

In (b), amended NJAC references.

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

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

Section was "Placement in accredited nonpublic schools which are not specifically approved for the education of disabled students". In (a), substituted "students with disabilities" for "disabled students" following "education of" and substituted "(d)" for "(c)"; in the introductory paragraph of (b)5 and (b)6, substituted "(e)7 and 9" for "(d)5 and 7"; in (b)5i, substituted "3.9" for "3.8"; rewrote (b)5iii; in (b)9i, substituted "students with disabilities" for "the disabled"; and in (b)11, substituted "6A:32" for "6:3-6".

#### Case Notes

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

Placement of a nine-year-old student diagnosed with having ADHD, sensory integration disorder, cluttering, abnormal auditory perception, and dyspraxia in an accredited nonpublic school which was not specifically approved for the education of students with disabilities would have provided the student with a FAPE where the school had strong language based instruction suited to the student's lack of focus and distractibility and also offered an array of services geared toward developing comprehensive social skills and addressing his cluttering issue. R.S. ex rel. R.S. v. Shrewsbury Borough Bd. of Educ., OAL Dkt. No. EDS 297-10 and EDS 366-10 (Consolidated), 2010 N.J. AGEN LEXIS 414, Final Decision (August 17, 2010).

Parents' request for placement of their five-year-old language delayed child in a sectarian private school failed because New Jersey law prohibits local school districts from arranging for placement of students with handicaps in religious schools. There was a distinction between placement by the school district itself, which was subject to all pertinent state standards, and unilateral placement by a parent, which need not comply with all state standards so long as such placement was deemed appropriate and, since the case did not involve a claim for reimbursement of the costs of a unilateral placement by the parents, the state standards governing special education, including the bar against payment to sectarian schools, fully applied. J.C. ex rel. C.C. v. Passaic City Bd. of Educ., OAL DKT. EDS 7644-06, 2006 N.J. AGEN LEXIS 807, Final Decision (September 18, 2006).

Even if parents had succeeded in showing that their son had not received FAPE at his old high school, their choice of alternative placement for their son was not appropriate because it was an out-of-state