

4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

“Custody” means that a child has been removed by the State agency empowered to do so from the care of his or her parent(s) and the right of the parent(s) to make educational decisions on behalf of the child has been terminated by a court of appropriate jurisdiction.

“Department of Education” means the New Jersey Department of Education.

“District board of education” means the school district of residence, the board of trustees of a charter school, the State agency or other public education agency which acts as the district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a free appropriate, public education to students with disabilities except as defined otherwise.

“Dyslexia” means a specific learning disability that is neurological in origin. It can be characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. Difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

“Early childhood program” means a general education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by a governmental agency.

“Extended school year services” means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student’s IEP at no cost to the parent.

“General Statewide assessment” means a Statewide assessment given to all students of a particular grade level except for those students with disabilities whose IEP specifies that they will participate in the alternate proficiency assessment.

“Individualized education program” (IEP) means a written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

“IEP team” means the group of individuals who are responsible for the development, review and revision of the student’s individualized education program. The members of the IEP team are listed at N.J.A.C. 6A:14-2.3(k)2.

“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. In the case of a student, the native language is the language normally used by the parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine the language of the student.

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

“Parent” means the natural or adoptive parent, the legal guardian, foster parent when willing to so serve, a surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term “parent” shall include the adult student as defined above.

“Referral” means the written request for an initial evaluation to determine whether a student is eligible for services under this chapter.

“Related services” is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix B.

“Special education” is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix C.

“Speech-language specialist” means a speech correctionist or speech-language specialist.

“Student” 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.

“Student age” means the school age of a student as defined by the following:

1. "Age three" means the attainment of the third birthday. Children with disabilities 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 cutoff date by the district board of education. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided preschool services for the balance of that school year.

3. "Age 21" means the attainment of the 21st birthday by June 30 of that school year. Students with disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Student with a disability" means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

"Transition services" for students age 16 or older, is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix D. For students under age 16, transition services is defined as set forth in N.J.A.C. 6A:14-3.7(e)11.

"Ward of the State" means a student who, pursuant to an order of a court of competent jurisdiction, is under the guardianship of an agency of the State, is a foster child for whom the foster parent is not the student's parent or is a student who, pursuant to an order of a court of competent jurisdiction, is in the custody of the State child welfare agency.

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

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

Amended "Adult student", "Consent", "Department of Education", "Native language", "Parent", "Related services", "Special education" and "Transition services"; inserted "Early childhood program" and "Extended school year services"; deleted "Recreation"; updated the N.J.A.C. references in "Individualized education program" and "IEP team".

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

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

Amended "General Statewide assessment" and amended "Student age".

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

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

Rewrote the introductory paragraph; changed name of definition "Approved private school for the disabled" to "Approved private school for students with disabilities"; rewrote definitions "Assistive technology device", "Assistive technology service", "Individualized education program", "Parent", "Related services", "Special education", and "Transition services"; added definitions "Custody" and "Ward of the State"; in definition "Early childhood program", substituted "general" for "regular"; and in definition "IEP team", substituted "education" for "educational" and updated the N.J.A.C. reference.

Notice of readoption with technical change.

See: 45 N.J.R. 1909(c).

Amended by R.2015 d.022, effective February 2, 2015.

See: 46 N.J.R. 1996(a), 47 N.J.R. 419(a).

In the introductory paragraph, deleted "§§" preceding "300.1"; and added definition "Dyslexia".

Case Notes

Definition of extended school year program (ESY) in N.J.A.C. 6A:14-1.3 in no way indicates that the ESY changes the June 30 end of the actual school year as defined in N.J.S.A. 18A:36-1. *C.T. v. Verona Bd. of Educ.*, 464 F.Supp.2d 383, 2006 U.S. Dist. LEXIS 88248 (D.N.J. 2006).

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

School district that conducted a special education evaluation was not required to finance an independent evaluation after a student had already transferred to a different district under N.J.A.C. 6A:14-1.3. The district was not responsible for financing an independent evaluation for an assessment for services the student would no longer be using, and because the transfer was a change of circumstances that occurred prior to the adjudication, the matter was not actionable. *Bd. of Educ. of the Township of Ewing, Cnty. of Mercer v. M.B.*, OAL Dkt. NO. EDS 10302-12, 2013 N.J. AGEN LEXIS 8, Final Decision (January 15, 2013).

School district's decision to de-classify a 12-year-old with a specific learning disability was upheld because, while the student may have exhibited some academic weaknesses in oral reading fluency and word attack and decoding skills, those weaknesses did not rise to the level of a disability; although the weaknesses may have impacted her reading comprehension, her instructional level was average or above average on a fifth grade level and she did not exhibit a severe discrepancy between her intellectual ability and achievement. *R.M. ex rel. H.M. v. Hadden Heights Bd. of Educ.*, OAL Dkt. No. EDS 4902-08, 2009 N.J. AGEN LEXIS 294, Final Decision (May 28, 2009).

While high school transition obligations are not well defined, the duty should be viewed in light of the general IDEA principle that districts need not maximize a student's potential but are in compliance when they offer meaningful educational benefit. Regulatory scheme speaks of transition services as a process that facilitates the child's movement from school to post-school activities. Thus, the program offered should provide the child with a genuine chance to explore options beyond high school. *C.K., G.K. and P.K. v. New Providence Bd. of Educ.*, OAL DKT. NO. EDS 11780-05, 2006 N.J. AGEN LEXIS 711, Final Decision (August 10, 2006).

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.

SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

6A:14-2.1 General requirements

(a) Prior to receiving a high school diploma, a student with a disability age 16 through 21 who voluntarily leaves a public school program may reenroll at any time up to and including the school year of his or her 21st birthday.

(b) Upon request by a parent, 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. 6A:14), student records rules (N.J.A.C. 6A:32), and/or low