

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

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

In (c)2, substituted "its" for "their" preceding "opinion".

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

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

In (a), substituted "September 5, 2006" for "October 6, 2003"; in (b)1, substituted "and," for "and, in furtherance thereof, to:" at the end; recodified former (b)1i through (b)1iii as (b)2 through (b)4; recodified former (b)2 through (b)6 as (b)5 through (b)9; in the introductory paragraph of (c), inserted "education"; in (d)2, inserted "and qualified"; added (i).

### Law Review and Journal Commentaries

Enforcing Administrative Law Special Education Decisions During the Appeal Process. Theodore A. Sussan, 222 N.J.L.J. 52 (2003).

Attorneys' fees and damages in special education cases. Candice Sang-Jasey and Linda D. Headley, 212 N.J.Law. 38 (Dec. 2001).

### Case Notes

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).

Appropriateness of individualized education program focuses 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).

Individualized program was not appropriate where goals could 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).

Standard in evaluating individualized education program 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).

Discussion of former regulatory scheme for education of handicapped children. Henderson v. Morristown Memorial Hospital, 198 N.J.Super. 418, 487 A.2d 742 (App.Div.1985), certification denied 101 N.J. 250, 501 A.2d 922 (1985).

School district's failure to include home programming as a related service for a 15-year-old child diagnosed with autistic spectrum disorder violated the statutory mandate that the child receive a free and appropriate public education since in order to function as an independent and productive member of society, the child had to achieve self-control over his maladaptive behaviors. Consequently, the district was ordered to fully reimburse the child's parents for all expenses of the home program and behavioral consultation services that they had incurred for the two past extended school years. C.R. ex rel. T.R. v. New Milford Bd. of Educ., OAL Dkt. No. EDS 11434-07, 2008 N.J. AGEN LEXIS 967, Final Decision (October 28, 2008).

Notwithstanding parents' contention that in order to receive a free appropriate public education, their 13-year-old son needed a form of therapy to treat his ocular motor dysfunction, convergence insufficiency, visual/depth perception deficits, and binocular instability, board of education was providing free appropriate public education without the requested therapy. His IEP was individually designed to meet his unique educational needs, he had received proper occupational therapy with respect to his visual difficulties, and he was achieving passing grades, and advancing from grade to grade, with respect to the quantum of educational benefit. N.S. ex rel. D.S. v. Hawthorne Bd. of Educ., OAL Dkt. No. EDS 9162-08, 2008 N.J. AGEN LEXIS 853, Final Decision (October 10, 2008).

Sole authority to hire and terminate specific staff members to provide services as required by an IEP rests with school district, provided the school district complies with statutory and regulatory mandates and

principles; ALJ has no authority to dictate to school district whom it may hire or terminate for that is not an issue of whether an IEP, as presented by school district, is in compliance with the Individuals with Disabilities Education Act. R.S. ex rel. A.S. v. Highland Park Bd. of Educ., OAL Dkt. No. EDS 4793-08, 2008 N.J. AGEN LEXIS 823, Final Decision (August 22, 2008).

Eighth grader with a specific learning disability was not entitled to special education services because she was well adjusted and overall performing at grade level and thus not "in need" of services within the meaning of the IDEA. J.S. and M.S. ex rel. R.S. v. Bound Brook Borough Bd. of Educ., OAL Dkt. No. EDS 2021-08, 2008 N.J. AGEN LEXIS 347, Final Decision (May 15, 2008).

School district's requirement that a diabetic high school student travel to the nurse's office to have his blood glucose levels monitored was discriminatory; without the flexibility to test on-the-spot, the student was experiencing a discrimination against time when he was away from the classroom, when he jeopardized his health and safety by walking to the nurse's office while already experiencing a low blood sugar, and by being deprived of in-class training to become self-sufficient and independent. G.K. and H.K. ex rel. C.K. v. Bloomfield Twp. Bd. of Educ., OAL DKT. NO. EDS 10165-06, 2008 N.J. AGEN LEXIS 117, Final Decision (February 4, 2008).

Disabled 16-year-old student was entitled to compensatory education for the equivalent of two and one-half academic years, in addition to the summer program recommended by an expert witness, as well as the immediate implementation of specific recommendations made by the expert for services to the student, where the evidence demonstrated that the student did not receive a FAPE; the student's reading disability had not been properly addressed by the district, and the student's IEP failed to comply with the requirements of IDEA. K.R. and J.R. ex rel. N.R. v. Vineland City Bd. of Educ., OAL DKT. NO. EDS 2321-07, 2008 N.J. AGEN LEXIS 22, Final Decision (January 22, 2008).

*Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176 (1982), provides a two-part test to determine whether or not a child has been given a FAPE, which is mandated by the IDEA: (1) a determination has to be made whether or not procedural safeguards required by the IDEA have been complied with, and (2) a determination has to be made whether or not the IEP proposed by the local educational authority is appropriate and reasonably calculated to enable the child to receive educational benefits. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. The least restrictive appropriate placement was at the EPIC school, in conjunction with the Ridgewood preschool with an EPIC shadow, and parents were entitled to reimbursement for their unilateral placement. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Mere fact that parents disagreed with what occurred at an IEP meeting and with the IEP itself did not constitute a lack of cooperation but instead constituted the input of concerned parents, which the school district failed to appropriately and adequately address. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents' request on behalf of their handicapped son for an exemption to the school district's dress code, which required uniforms, failed where the child's IEP was reasonably calculated to provide him with a FAPE. *J.R. and M.S. ex rel. S.S. v. Secaucus Bd. of Educ.*, OAL DKT. NO. EDS 10208-06, 2006 N.J. AGEN LEXIS 840, Final Decision (October 20, 2006).

Law did not support parents' insistence on a "certified" Wilson and/or Orton-Gillingham (OG) instructor for a dyslexic student where school district presented evidence that it had competent instruction in the Wilson technique, and evidence was insufficient to show that student's slow progress in reading was attributable to the credentials (or an alleged lack thereof) of the school district's teaching staff. *D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 8203-04, 2005 N.J. AGEN LEXIS 617, Final Decision (October 18, 2005).

Student with autistic spectrum disorder was not entitled to compensatory education for the six years parents contended he did not receive a FAPE; parents' contention that the district had low expectations for the student and was simply warehousing him, as evidenced by the failure to administer standardized testing, was rejected where it was determined that the student's functional ability and classroom performance, as testified to by his teachers, provided a sufficient barometer of his skills. *R.P. and V.P. ex rel. E.P. v. Ramsey Bd. of Educ.*, OAL DKT. NO. EDS 11682-04, 2006 N.J. AGEN LEXIS 745, Final Decision (September 5, 2006), *aff'd*, 2008 U.S. Dist. LEXIS 70884 (D.N.J. Sept. 17, 2008) (unpublished opinion) (affirming denial of compensatory education because student was now a college student).

Placement of student in new school, which was located right next to a public high school, was appropriate notwithstanding mother's concern for student's physical safety; although student had been the victim of violence at the hands of children at a former school, the school district painted a clear picture not only of the safety and security measures it had in place to protect its students, but of the propriety of the placement with respect to the educational needs of the student. *M.D. ex rel. D.H. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 9481-05, 2005 N.J. AGEN LEXIS 487, Final Decision (September 2, 2005).

School district failed to provide a visually impaired student with a free and appropriate public education by failing to provide him with dual busing, which had previously been provided to him for an extended period of time, to the respective homes of his divorced mother and father due to a shared custody agreement. *C.R. ex rel. C.R. v. Bridgewater-Raritan Reg'l Bd. of Educ.*, OAL DKT. NO. EDS 10150-04, 2005 N.J. AGEN LEXIS 530, Final Decision (August 30, 2005).

Student's sudden change in school behavior might not support expulsion if special classification indicated. *K.E. v. Monroe Township Board of Education*, 96 N.J.A.R.2d (EDS) 77.

Individualized education program (IEP) implemented where evidence showed program appropriate and reasonable and student improved under prior IEPs. *A.S. v. Franklin Township Board of Education*, 96 N.J.A.R.2d (EDS) 25.

Funds left unexpended after providing intervention services to handicapped children were not refundable if appropriately applied towards nonspecified operating costs. *Monmouth and Ocean Counties Early Intervention Programs v. Commissioner of Education*, 95 N.J.A.R.2d (EDU) 152.

Stipulation in Pennsylvania court was not an acknowledgment of domicile so as to preclude parents from seeking New Jersey funding for placement of handicapped child. *J.D. and K.D., v. Middletown Board of Education*, 95 N.J.A.R.2d (EDU) 78.

Contracting for speech correctionist services; tenured position abolished. *Impey v. Board of Education of Borough of Shrewsbury*, 92 N.J.A.R.2d (EDU) 197.

## 6A:14-1.2 District eligibility for assistance under IDEA Part B

(a) For the purposes of this section, each district board of education and State agency program that acts as a district board of education is eligible for assistance under IDEA Part B for a fiscal year by having a special education plan that demonstrates to the satisfaction of the Department of Education through the county office of education that it meets the conditions of (b) through (f) below.

1. If a district board of education has on file with the Department of Education through the county office of education a plan consisting of policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect before December 3, 2004, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.

2. Amendments to policies, procedures and programs shall be made according to the following:

i. The approved policies, procedures and programs submitted by a district board of education shall remain in effect until the county office approves such amendments as the district board of education deems necessary; or

ii. If the provisions of the IDEA Amendments of 2004 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

(b) Each district board of education shall have policies, procedures and programs approved by the Department of Education through the county office of education that are in effect to ensure the following:

1. A free appropriate public education according to N.J.A.C. 6A:14-1.1(b) 1 is available to all students with disabilities between the ages of three and 21, including students with disabilities that have been suspended or expelled from school;

2. Full educational opportunity to all students with disabilities is provided;

3. All students with disabilities, who are in need of special education and related services, including students with disabilities attending nonpublic schools, regardless of the severity of their disabilities, are located, identified and evaluated according to N.J.A.C. 6A:14-3.3;

4. Homeless students are located, identified and evaluated and provided special education and related services in accordance with the IDEA, including the appointment of a surrogate parent for unaccompanied homeless youths as defined in 42 U.S.C. §§11431 et seq.;

5. An individualized education program is developed, reviewed and as appropriate, revised according to N.J.A.C. 6A:14-3.6 and 3.7;

6. To the maximum extent appropriate students with disabilities are educated in the least restrictive environment according to N.J.A.C. 6A:14-4.2;

7. Students with disabilities are afforded the procedural safeguards required by N.J.A.C. 6A:14-2;

8. Students with disabilities are evaluated according to N.J.A.C. 6A:14-2.5 and 3.4;

9. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6A:32;

10. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and that by the student's third birthday an individualized education program has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);

11. Provision is made for the participation of students with disabilities who are placed by their parents in non-public schools according to N.J.A.C. 6A:14-6.1 and 6.2;

12. Students with disabilities who are placed in private schools by the district board of education, are provided special education and related services at no cost to their parents;

13. All personnel serving students with disabilities are highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law;

14. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided;

i. The district board of education shall maintain information to demonstrate its efforts to:

(1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities;

(2) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others;

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;

(4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and

(5) Provide for joint training activities of parents and special education, related services and general education personnel;

15. Students with disabilities are included in all State-wide and districtwide assessment programs, with appropriate accommodations, where necessary;

16. Instructional materials will be provided to blind or print-disabled students in a timely manner, consistent with a plan developed by the district;

17. For students with disabilities who are potentially eligible to receive services from the Division of Developmental Disabilities in the Department of Human Services, the district will provide, pursuant to the Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services; and

18. When the school district utilizes electronic mail, parents are informed as to whether they may use electronic mail to submit requests to school officials regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education. If this is permitted, parents shall be informed of the procedures to access the electronic mail system.

(c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through 14 above.

(d) Annually, each district board of education shall describe, in accordance with instructions from the Department of Education, how it will use the funds under Part B of the IDEA during the next school year.

(e) Annually, each district board of education shall submit:

1. A report of the numbers of students with disabilities according to their Federal disability category, age, racial-ethnic background, and placement;

2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to students with disabilities and the full-time equivalence of their assignments and relevant information on current and anticipated personnel vacancies and shortages; and

3. Any additional data reports as required by the Department of Education to comply with the IDEA (20

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.

#### 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).

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 cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

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

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

In (b), deleted reference to adult students.

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), updated the N.J.A.C. reference for student records rules; deleted (c).

#### 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).

Three-year old special education student did not require extended services. *J.L. v. Board of Education of Englewood*, 97 N.J.A.R.2d (EDS) 2.

Handicapped student received entirely inappropriate and inadequate education and was entitled to placement in out-of-state residential program. *L.P. v. Hamilton Board of Education*, 96 N.J.A.R.2d (EDS) 360.

Emergency relief request regarding classified student’s suspension was rendered moot by student’s withdrawal from school. *Brick Township Board of Education v. M.F.*, 96 N.J.A.R.2d (EDS) 127.

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 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.

### 6A:14-2.2 Surrogate parents, wards of the State and foster parents

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

1. The parent as defined according to N.J.A.C. 6A:14-1.3 cannot be identified;
2. The parent cannot be located after reasonable efforts;
3. An agency of the State of New Jersey has guardianship of the student, or the student is determined a ward of the State and, if the student is placed with a foster parent, the foster parent declines to serve as the student's parent; or
4. The student is an unaccompanied homeless youth as that term is defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434(a)(6)).

(b) A district board of education shall make reasonable efforts to appoint a surrogate parent within 30 days of the determination that a surrogate parent is needed for a student.

(c) If the district fails to appoint a surrogate parent for a ward of the State, a judge may appoint a surrogate parent if the judge determines a surrogate parent is necessary for such student.

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

(e) The person serving as a surrogate parent shall:

1. Have no interest that conflicts with those of the student he or she represents;
2. Possess knowledge and skills that ensure adequate representation of the student;
3. Not be replaced without cause;
4. Be at least 18 years of age; and
5. If the person serving as the surrogate parent is compensated, a criminal history review pursuant to N.J.S.A. 18A:6-7.1 shall be completed for the individual;

(f) The person(s) serving as a surrogate parent may not be an employee of the Department of Education, the district board of education or a public or nonpublic agency that is

involved in the education or care of the child. A surrogate parent may be paid solely to act in that capacity.

(g) When a student (who is or may be a student with a disability) is in the care of a foster parent, and the foster parent is not the parent of the student as defined in N.J.A.C. 6A:14-1.3, the district board of education where the foster parent resides shall contact the student's case manager at the Division of Youth and Family Services (DYFS) in the Department of Human Services to:

1. Determine whether the parent retains the right to make educational decisions; and
2. Determine the whereabouts of the parent.

(h) If the parent retains the right to make educational decisions and the parent's whereabouts are known to the district board of education, the school shall obtain all required consent from and provide written notices to the parent.

(i) If the district board of education cannot ascertain the whereabouts of the parent, the foster parent, unless that person is unwilling to do so, shall serve as the parent pursuant to N.J.A.C. 6A:14-1.3. If there is no foster parent, or the foster parent is unwilling to serve as the student's parent, the district board of education shall consult with the student's case manager at DYFS to assist in identifying an individual to serve as a surrogate parent and appoint a surrogate parent and obtain all required consent from, and provide written notices to, the surrogate parent.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Rewrote the section.  
Amended by R.2001 d.397, effective November 5, 2001.  
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (d), inserted "a" preceding "public", "or nonpublic" preceding "agency", and substituted "that is involved in the education or care of the child" for "providing services to the student".

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 "Surrogate parents and foster parents". Rewrote the section.

#### 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).

Individuals with Disabilities Act (IDEA) imposed no federal requirement of statewide uniformity of methods for the selection and training of surrogate parents, and state special education regulations which provided for establishment of selection and training systems by each district board of education or responsible state agency were not arbitrary, capricious or unreasonable. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations defining eligibility for appointment as a surrogate parent which did not prohibit appointment of an employee of a nonpublic agency involved in the education or care of the child as that child's surrogate parent improperly failed to conform to federal conflict-of-interest standard. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

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

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

Rewrote the section.

Amended by R.2001 d.397, effective November 5, 2001.

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

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

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

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

Rewrote the section.

Amended by R.2010 d.287, effective December 6, 2010.

See: 42 N.J.R. 1284(a), 42 N.J.R. 2953(a).

In (e)2, inserted "special education and related" and "or otherwise institute any legal proceeding seeking to overturn the parent's determination", and substituted "shall not" for "may"; and added (e)3 and (e)4.

#### Case Notes

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

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

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

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

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

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

vices personnel as appropriate," no authority exists for reimbursement of such providers. C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 8034-08, 2008 N.J. AGEN LEXIS 876, Final Decision (October 29, 2008).

IEP was inadequate where, among other things, the case manager admitted that she received absolutely no input from staff who had worked with the student during the school year nor did she attempt to retrieve that information, contrary to N.J.A.C. 6A:14-2.3(k)'s requirement that a teacher with knowledge of the student participate in the eligibility meeting and development of the student's IEP. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Maintenance of 14-year-old student's current placement in after-school program and current levels of speech and occupational therapy was ordered pending the due process hearing. Parent sent a letter, rejecting the high school IEP and asserting "stay-put" rights, within 15 days of the IEP meeting and the school district did not respond for three weeks; and, in any event, strict adherence to the 15-day requirement of N.J.A.C. 6A:14-2.3(h) would frustrate congressional intent to create a "presumption in favor of the child's current educational placement." Where the student had not been comprehensively evaluated in nine years and the township district had included the after-school facility in the student's IEP for a number of years, a due process hearing was required before any changes could be made. W.O. ex rel. T.O. v. Freehold Reg'l High School Bd. of Educ., OAL Dkt. No. EDS 4652-07, 2007 N.J. AGEN LEXIS 440, Emergent Relief Final Decision (July 2, 2007).

Parents' application for emergent, "stay-put" relief was not barred by the 15-day notice provision in N.J.A.C. 6A:14-2.3(h), which provides that a district board of education shall implement the proposed action unless the parents request mediation or a due process hearing within 15 days, because the parents never received proper *written* notice of the proposed change in placement, as required by N.J.A.C. 6A:14-2.3(h) and (g). R.B. and C.B. ex rel. A.B. v. Great Meadows Reg'l Bd. of Educ., OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P., OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

Relief sought by the District, including having 17-year-old student evaluated in the areas of psychological, learning, and social/psychiatric was warranted notwithstanding his mother's refusal to consent to same. The District offered sufficient proof that student had a distressing mental condition, where student admitted hearing voices, had demonstrated violent propensities when he punched and broke his brother's jaw, student sought help from the guidance office and the school psychologist, and his behavior was confirmed in correspondence received from a counseling organization and in conversations with his mother. Ocean City Bd. of Educ. v. J.J. ex rel. J.C., OAL Dkt. No. EDS 8711-05, 2005 N.J. AGEN LEXIS 931, Final Decision (December 19, 2005).

School district committed numerous procedural errors where dual busing for a visually impaired student was abruptly halted; the only notice the parents received that dual busing was no longer going to be provided was from the transportation department, and there was no notification after an IEP meeting as to why this accommodation was not specified as a related service in the IEP. C.R. ex rel. C.R. v. Bridgewater-Raritan Reg'l Bd. of Educ., OAL DKT. NO. EDS 10150-04, 2005 N.J. AGEN LEXIS 530, Final Decision (August 30, 2005).

Graduation was "change of placement," within the meaning of procedural protection of parents' right to be consulted about their disabled children's education. T.H. v. Princeton Regional Board Of Education, 2003 N.J. AGEN LEXIS 1643, (N.J. Adm.), NO. EDS 4087-03.

School board's learning disability teacher-consultant and speech and language teacher, who were academically trained in the field of education, with an emphasis in special education, and who were certificated as teachers, could attend eligibility meeting for students classified for special education and related services, absent evidence that teachers were lacking in knowledge of general education program offered in board's schools. A.D. and E.P., on Behalf of E.D.P., v. Montclair Board of Education, 2000 N.J. AGEN LEXIS 700, N.J. Adm., Nov 08, 2000, (NO. EDS 3612-00).

Attendance of mother's representative at individualized education program (IEP) meetings involving student, his mother, and school's child study team was not appropriate, where representative had compromised her effectiveness as an advocate on behalf of student by filing her lawsuit against child study team and its members individually. J.J.Y. v. Kenilworth Board of Education, 2000 N.J. AGEN LEXIS 1328, N.J. Adm., Aug 11, 2000, (NO. EDS 5599-00).

Special education program approved for classified student despite lack of parental approval after mother failed to attend either of two scheduled conferences. Seaside Park Board of Education v. C.G., 96 N.J.A.R.2d (EDS) 257.

Handicapped child's pre-school educational program was appropriate since it conferred meaningful educational benefit for child. A.E. v. Springfield Board of Education, 96 N.J.A.R.2d (EDS) 128.

Mother of third-grader who exhibited serious behavioral and educational problems was properly ordered to produce child for evaluations by child study team. Linden Board of Education v. T.T., 96 N.J.A.R.2d (EDS) 105.

Parents' refusal to cooperate compels administrative order to place special education student in out-of-district facility recommended under individualized education plan. Lawrence Township Board of Education v. C.D., 96 N.J.A.R.2d (EDS) 98.

Objection to emotionally disturbed classification and out-of-district placement of student with discipline problems dismissed after both classification and placement found to be justified. L.M. v. Vinland Board of Education, 96 N.J.A.R.2d (EDS) 93.

Student classified as neurologically impaired was properly ordered placed in self-contained class despite lack of parental consent to such placement. Jersey City Board of Education v. J.H., 96 N.J.A.R.2d (EDS) 92.

Poor academic performance and consistent misbehavior warranted comprehensive evaluation of child over parent's consent to determine value of special education classification. Voorhees Township Board In Interest of S.H., 95 N.J.A.R.2d (EDS) 228.

Intervention in form of an evaluation by child study team was necessary for child with possible educational disability notwithstanding parent's lack of consent. Parsippany-Troy Hills Board v. B.H., 95 N.J.A.R.2d (EDS) 225.

Child's possible educational disability warranted comprehensive evaluation by child study team despite parent's failure to appear. Union Township Board v. T.K.J., 95 N.J.A.R.2d (EDS) 224.

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.

Poor academic performance and behavior necessitated child's classification, program and placement even though parent was inaccessible and unresponsive. *M.F. v. Piscataway Board*, 95 N.J.A.R.2d (EDS) 206.

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.

Mother of disabled student required to participate in interview with school district. *Jersey City State-Operated School District v. M.B.*, 95 N.J.A.R.2d (EDS) 8.

Board of Education entitled to administer initial evaluation for special education services of student, no parental consent. *Jersey City Board of Education v. T.W.*, 95 N.J.A.R.2d (EDS) 6.

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).

#### 6A:14-2.4 Native language

(a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly 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.

(b) If the native language is not a written language, the district board of education shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
2. That the parent understands the content of the notice; and
3. There is written documentation that the requirements of (b)1 and 2 above have been met.

#### Case Notes

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capri-

cious, 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).

#### 6A:14-2.5 Protection in evaluation procedures

(a) In conducting an evaluation, each district board of education shall:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:

i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and

ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;

2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and

3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each district board of education shall ensure:

1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:

i. Are selected and administered so as not to be racially or culturally discriminatory; and

ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and

iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:

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

ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;

3. The student is assessed in all areas of suspected disability;

4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;

5. Tests are selected, administered and interpreted so that when a student 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. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two



members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability; and

7. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category.

(c) A parent may request an independent evaluation if there is disagreement with any assessment conducted as part of an initial evaluation or a reevaluation provided by a district board of education.

1. If a parent seeks an independent evaluation in an area not assessed as part of an initial evaluation or a reevaluation, the school district shall first have the opportunity to conduct the requested evaluation.

i. The school district shall determine within ten days of receipt of the request for an independent evaluation whether or not to conduct an evaluation pursuant to (c)1iii and iv below, and notify the parent of its determination.

ii. If the school district determines to conduct the evaluation, it shall notify the parent in writing and complete the evaluation within 45 calendar days of the date of the parent's request.

iii. If the school district determines not to conduct the evaluation first, it shall proceed in accordance with (c)2 below.

iv. After receipt of the school district's evaluation, or the expiration of the 45 calendar day period in which to complete the evaluation, the parent may then request an independent evaluation if the parent disagrees with the evaluation conducted by the school district.

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

i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)3 and 4 below. In addition, except as provided in (c)1 above, the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.

3. Any independent evaluation purchased at public expense shall:

i. Be conducted according to N.J.A.C. 6A:14-3.4; and

ii. Be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved under N.J.A.C. 6A:14-5, or private practitioner, who is appropriately certified and/or licensed, where a license is required.

4. An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).

5. Any independent evaluation submitted to the district, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.

6. If a parent requests an independent evaluation, the school district may ask the parent to explain why he or she objects to the school district's evaluation. However, the school district shall not require such an explanation and the school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district's evaluation.

7. For any independent evaluation, whether purchased at public or private expense, the school district shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.

8. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

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

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

In (b), added 1iii and 7; and rewrote (c).

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

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

In (a), substituted "an" for "the" in the introductory paragraph; rewrote (b)1ii and (b)6; rewrote (c).

#### Law Review and Journal Commentaries

Expert Witnesses in Special Education Cases, Lawrence R. Jones, Joni Jones, 229 N.J.L.J. 54 (2004).

#### 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).

Amendment to state special education regulations governing assessment of students for transition services improperly removed such students' entitlement, under the Individuals with Disabilities Education Act (IDEA) and previous version of regulations, to outcome-oriented transition services including assessment of appropriate post-secondary outcomes, where removed portion of previous regulations, specifically addressing evaluation for post-secondary outcomes, was not redundant. Baer v. Klagholz, 771 A.2d 603 (2001).

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).

Mother's May 2008 request to board of education to have her son independently evaluated for psychiatric, neurological, and audiological deficiencies was without merit. A psychiatric evaluation was done in April 2008 and the basis for the conclusions in the evaluation had been confirmed as accurate by board of education's staff, who dealt with the student on a daily basis. An audiological evaluation was not warranted because the student received speech and language services, which were discontinued in 2006 after an evaluation was done with testing showing sufficient strengths in multiple areas. A neurological evaluation was not required because the recent psychiatric evaluation of April 2008, confirmed the child had ADHD as diagnosed in the last neurodevelopmental evaluation of 2004. *Lakewood Twp. Bd. of Educ. v. B.G. ex rel. T.S.*, OAL Dkt. No. EDS 8251-08, 2008 N.J. AGEN LEXIS 850, Final Decision (September 29, 2008).

Other than the fact that a school district employed a certain rehabilitation services provider, an independent contractor, to conduct occupational therapy evaluations and treatment, there was no testimony to show that the rehabilitation services provider's therapists were employees of the district. The use of a therapist employed by provider to conduct an independent evaluation of a high-school student with cerebral palsy was not per se a procedural violation, particularly where there was testimony that clearly showed that the therapist who conducted the evaluation was not the same therapist who actually had provided occupational therapy to the student. *Z.R. v. Fort Lee Bd. of Educ.*, OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Where the parent of a high-school student with cerebral palsy sought a comprehensive vocational assessment and functional ADL assessment to evaluate areas not specifically appraised by the school district, the district failed to follow required procedures for these specific evaluations, by not conducting the evaluation itself, nor providing the parents with information about where to obtain an independent evaluation, nor proceeding with a due process petition to prove why these evaluations were unnecessary. Even though the student was able to show that the district's actions violated its procedural obligations, she failed to prove that these violations resulted in a substantive deprivation because, even without the requested evaluations, she continued to make meaningful educational progress and both she and her parents were active participants in her IEP formulation process throughout the years. *Z.R. v. Fort Lee Bd. of Educ.*, OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

School board took it upon itself to deny petitioner's request for an independent functional behavioral assessment at Board expense, rather than filing for a due process hearing as required by N.J.A.C. 6A:14-2.5(c); petitioner entitled to the assessment. *J.S. ex rel. A.S. v. Parsippany-Troy Hills Twp. Bd. of Educ.*, OAL Dkt. No. EDS 3783-08, 2008 N.J. AGEN LEXIS 368, Final Decision (June 10, 2008).

Petitioners' request for an independent neuro-psychological examination was denied because the school board was entitled to first complete the multiple assessments it had agreed to in connection with petitioners' previous due process petition. *C.S. v. Middletown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 729-08, 2008 N.J. AGEN LEXIS 296, Final Decision (April 14, 2008).

There was no basis to require a school district to provide an independent evaluation of a student at the district's own expense, after the district had already evaluated the student and determined that the student did not qualify for special education services; parents' contentions concerning a perceived discrepancy between the W-J III language arts scores and the NJASK score of "partially proficient" in language arts did not compel a different result. *Glen Ridge Bd. of Educ. v. J.D. and K.D. ex rel. C.D.*, OAL Dkt. No. EDS 03056-08, 2008 N.J. AGEN LEXIS 230, Final Decision (April 2, 2008).

Where parents requested and a school district agreed to independent evaluations of a student regarding placement, the administrative law judge decided that it was essential for the parties to arrange an agreed-upon IEP team meeting so that the IEP team could consider the independent evaluations as required by N.J.A.C. 6A:14-2.5(c), despite the fact that the parties had already come to an agreement concerning the placement of the student. *P.S. ex rel. I.S. v. Edgewater Park Twp. Bd. of Educ.*, OAL Dkt. No. EDS 10418-04, 2005 N.J. AGEN LEXIS 660, Final Decision (October 31, 2005).

School board may deny parents' request for additional assessment or evaluation where numerous previous assessments provide sufficient basis for evaluating student. *Hamburg Board of Education v. A.H.*, 96 N.J.A.R.2d (EDS) 87.

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.

### 6A:14-2.6 Mediation

(a) Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 years when there is a disagreement regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education.

1. A request for mediation shall not be used to deny or delay the right to request a due process hearing.

2. Mediation may be agreed to by a parent and school district in place of the resolution meeting described in N.J.A.C. 6A:14-2.7.

(b) The district board of education may establish procedures that require a parent, who chooses not to use the mediation process, to meet with a State mediator to discuss the benefits of mediation. This meeting may take place by telephone or through the use of electronic conference equipment.

(c) 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 students with disabilities or with respect to the student that is the subject of the mediation.

(d) Mediation is available from the Department of Education at the State level through the Office of Special Education Programs. Mediation shall be provided as follows:

1. To initiate mediation through the Office of Special Education Programs, a written request shall be submitted to the State Director of the Office of Special Education Programs;

2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the student's name, student's address, student's date of birth,

name of the school the student is attending the issue(s) in dispute and the relief sought;

3. A mediation conference consistent with New Jersey law and rules shall be scheduled within 15 calendar days after receipt of a written request and completed within 30 days of the date of the request. At the mediation conference, issues shall be discussed and options for resolution shall be explored;

4. The role of the mediator is to:

i. Facilitate communication between the parties in an impartial manner;

ii. Chair the meeting;

iii. Assist the parties in reaching an agreement, and, if an agreement is reached, the mediator shall prepare the document setting forth the agreement of the parties at the mediation conference;

iv. Assure that the agreement prepared by the mediator complies with Federal and State law and regulation;

v. When appropriate, adjourn the mediation to a date certain, but not more than 45 days from the date of the request for a mediation conference, at the request of the parties to obtain additional information or explore options; and

vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute;

5. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute;

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement which shall be prepared by the mediator at the mediation conference and signed by each party. Mediation agreements shall not address special education or related services for more than one school year. 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, including audio recording, shall be made;

7. Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings;

8. Prior to commencement of the mediation conference, the mediator may, at his or her discretion and upon request of a party, require that the parties sign a confidentiality pledge to ensure that all discussions that occur during the mediation remain confidential;

9. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation;

10. Pending the outcome of mediation, no change shall be made to the student'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 N.J.A.C. 6A:14-2.7 as provided in 20 U.S.C. §1415(k) as amended and supplemented (see chapter Appendix A); and

11. Signed agreements resulting from mediation conducted according to this section are binding on the parties. If either party fails to comply with any provision of the agreement, either party may seek enforcement of the agreement in a court of appropriate jurisdiction. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement provisions addressing the student's program or services. The request shall be filed no later than the 90th calendar day from the date that the action set forth in the mediation agreement that is the subject of the enforcement request was required to have occurred or have been completed. A request for enforcement of a mediation agreement may be made by writing to the State Director of the Office of Special Education Programs, Department of Education. If there are multiple clauses in the agreement, the 90-day time frame to seek enforcement shall be measured separately for each clause, based on the date by which each is required by the agreement to occur. Upon receipt of this request, the Office of Special Education Programs shall make a determination regarding the implementation of the agreement. If it is determined that the district has failed to implement the agreement or part of the agreement, the Office of Special Education Programs shall order the district to implement the agreement or part of the agreement, as appropriate. If any part of the mediation agreement is modified by subsequent accord of the parties, enforcement may not be sought with respect to that part of the agreement.

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

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

In (d)3, substituted "10" for "20" preceding "calendar days"; and added (d)10.

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

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

In (d)9, amended N.J.A.C. reference and substituted "Appendixes A and D" for "Appendix".

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

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

Rewrote (a); recodified former (b)1 as new (b); in (c), added "or with respect to the student that is the subject of the mediation" at the end; rewrote (d).

#### 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.

Parents' request for immediate transmission of case (involving nine-year-old with disabilities, including mental retardation) to OAL for hearing was denied given the policy of encouraging settlement and given the Board of Education's contention that settlement remained viable and that the case should be subject to a resolution session first. *S.W. ex rel. D.W. v. East Windsor Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 8431-07, 2007 N.J. AGEN LEXIS 682, Final Decision (October 17, 2007).

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.

### 6A:14-2.7 Due process hearings

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.

1. A request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:

i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or

ii. The district board of education withheld information that was required by law to be provided to the parent.

(b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

(c) A request for a due process hearing shall be made in writing to the State Director of the Office of Special Education Programs. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, the student's date of birth, the name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought and, in the case of a homeless child, available contact information for the child and the name of the school the child is attending.

(d) Except when a response is required to be filed by a district pursuant to (e) below, the party against whom a request for a due process hearing is directed shall, within 10 days of the filing of a request for a due process hearing, provide a written response specifically addressing the issue(s) raised in the request for a due process hearing to the party that requested the due process hearing.

(e) When a parent requests a due process hearing, or an expedited due process hearing (for disciplinary issues) and the district has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the district shall send a written response to the parent within 10 days of receiving the petition. The written response shall include:

1. An explanation of why the agency proposed or refused to take the action raised in the request for a due process hearing;

2. A description of other options that the IEP team considered and the reasons those options were rejected;

3. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

4. A description of the factors that are relevant to the agency's proposal or refusal.

(f) A request for a due process hearing, or expedited due process hearing (for disciplinary issues) serves as notice to the respondent of the issues in the due process complaint. The respondent may assert that the notice does not meet the requirements of 20 U.S.C. §1415 and, therefore, the notice is not sufficient. The notice for a hearing will be considered sufficient unless the respondent notifies the Office of Special Education Programs and the complaining party (petitioner), in writing, within 15 days of receipt of the request for a due process hearing.

1. The sufficiency challenge will be forwarded to the Office of Administrative Law (OAL) and within five days of receipt of the written objection, an administrative law judge will determine whether the notice meets the requirements of 20 U.S.C. §1415 and will notify the parties in writing of the determination.

2. If the notice is determined sufficient, the timelines for resolution activities and for conducting a due process hearing will continue. If the notice is deemed insufficient, the administrative law judge may dismiss the case and the petitioner may re-file with the Office of Special Education Programs, or the administrative law judge may grant permission to amend the request.

i. If the case is dismissed and the petitioner files a new request for a due process hearing, all applicable timeframes and procedures set forth in these rules shall commence anew.

ii. If the administrative law judge allows the petitioner to amend the request for a due process hearing as part of a sufficiency challenge, the applicable timeframes and procedures shall commence to run from the time of the administrative law judge's determination.

(g) When the Office of Special Education Programs receives a request for a due process hearing, the matter shall be processed and, as appropriate, mediation and a due process hearing in accordance with these rules will be made available to the parties.

(h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity to resolve the matter before proceeding to a due process hearing in a resolution meeting. The school district must conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.

1. The resolution meeting shall include a representative of the school district who has authority to make decisions on behalf of the school district.

i. The school district shall not include its attorney unless the parent is accompanied by an attorney.

ii. An advocate shall not be considered an attorney for purposes of determining whether a school district

shall be entitled to bring its attorney to a resolution meeting.

2. For a due process hearing, the resolution meeting shall be held within 15 days of receiving the parents' request. For an expedited due process hearing, the resolution meeting shall be held within seven days of receiving the request.

3. The resolution meeting shall not be audio or video recorded by either party unless both the district board of education and the parent agree to record the resolution meeting.

4. If a request for a due process hearing is not resolved to the satisfaction of the parents within 30 days of the receipt of the petition, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for a due process hearing.

5. If an expedited due process hearing request is not resolved to the satisfaction of the parents within 15 days of receipt of the request, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for an expedited due process hearing.

6. If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.

i. Either party may void the agreement, in writing, within three business days of signing the agreement.

ii. If the agreement is not voided within the three business days, it is legally binding.

iii. If either party fails to implement the written agreement, it is enforceable in any State court of competent jurisdiction or in the United States District court.

iv. If a dispute arises over the voiding of a resolution meeting agreement, the matter shall be transmitted to the Office of Administrative Law for a due process hearing.

7. If the requirements of this subsection with respect to scheduling and conducting a resolution meeting are not adhered to, issues concerning adherence to such procedures shall be raised in a due process hearing, and shall not be raised in a request for a complaint investigation pursuant to N.J.A.C. 6A:14-9.2.

8. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the office of special education programs in accordance with N.J.A.C. 6A:14-2.6.

i. Parents shall indicate on their request for a due process hearing whether mediation is also requested.

ii. If the district agrees to mediation in lieu of a resolution meeting, a representative of the district shall contact the Office of Special Education Programs to facilitate the scheduling of the mediation conference.



iii. If the parties fail to participate in mediation within 30 days of the date the request for a due process hearing is submitted, the matter shall be transmitted to the Office of Administrative Law for a due process

hearing with a notation that the parties declined a resolution meeting and requested mediation, but that the mediation conference failed to occur.

of the parties, enforcement may not be sought with respect to that part of the decision.

(u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student'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 (m) above or as provided in 20 U.S.C. §1415(k)4 as amended and supplemented. (See chapter Appendix A.)

1. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings.

(v) Any party may appeal the decision of an administrative law judge in a due process hearing.

1. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance the final decision. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergency relief or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitations period for filing appeals, and are instead subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.

(w) Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:

1. There shall be no resolution period or opportunity for a resolution meeting pursuant to (h) above with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and

2. The provisions of (d), (e) and (f) above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

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

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

Rewrote (d)3ii.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), changed N.J.A.C. reference.

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

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

Rewrote the section.

Amended by R.2002 d.79, effective March 18, 2002.

See: 33 N.J.R. 3715(a), 34 N.J.R. 1265(a).

In (b), inserted "or a" preceding "revaluation", and deleted "implement an initial IEP" preceding "or to release".

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

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

In (a), substituted "Appendixes A and D" for "Appendix" in the third sentence, and amended N.J.A.C. reference at the end.

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

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

Rewrote the section.

#### Law Review and Journal Commentaries

Stay-Put Provision and Its Implications to Practitioners. George M. Holland, 222 N.J. Lawyer 35 (2003).

#### Case Notes

Administrative exhaustion is required before a district court can provide review under 20 U.S.C. § 1415(e)(2) of a school district's determination that a student's misbehavior and misconduct is not a manifestation of his disability: (1) a manifestation determination is most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provide a mechanism for obtaining administrative review of a manifestation determination; and (3) the development of the record, through the administrative review process, is necessary for a court to determine whether or not an alleged manifestation determination error has been made, whether the student's federal rights have been violated as a result of that error, and whether the student is entitled to damages. *Gutin v. Wash. Twp. Bd. of Educ.*, 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

District court could not review, pursuant to 20 U.S.C. § 1415(e)(2), a school district's determination that a student's use of drugs was not a manifestation of his Attention Deficit Disorder (ADD) because the student's parents had not exhausted their administrative remedies by filing an administrative appeal challenging that determination: (1) a manifestation determination was most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provided a mechanism for administratively appealing manifestation determinations; and (3) requiring exhaustion of administrative remedies with regard to claims based on alleged manifestation determination errors was appropriate because, to award damages for such an alleged error, a court would necessarily have to decide whether the behavior at issue was a manifestation of the student's disability, and the use of the administrative process would help develop the record and establish whether or not a violation of federal law had occurred. *Gutin v. Wash. Twp. Bd. of Educ.*, 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

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.

Authorizing the Office of Special Education Programs to issue the final decision in complaint investigations under N.J.A.C. 6A:14-9.2 is consistent with the overall scheme of resolving individual complaints

under the Individuals with Disabilities Education Act; even when a parent or school district receives a due process hearing under N.J.A.C. 6A:14-2.7, the Commissioner of Education does not issue the final administrative decision. *Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ.*, 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Forty-five day deadline provided in state special education regulations for expedited hearings in disciplinary matters upon the request of a parent was not arbitrary, capricious, or unreasonable, despite fact that deadline for non-expedited hearings was also 45 days; deadline for expedited hearings allowed for no exceptions or extensions, providing for final decision within the accelerated time frame. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

State special education regulations requiring parent seeking emergency relief as part of expedited hearing in connection with student disciplinary matter to demonstrate entitlement to emergency relief did not violate provision of the Individuals with Disabilities Education Act (IDEA) requiring state educational agency (SEA) and local educational agency (LEA) to arrange for expedited hearing upon a parent's request, where emergency relief process and expedited hearing process were separate and were not redundant, and where request for emergency relief did not slow expedited hearing process. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Initial Decision (2009 N.J. AGEN LEXIS 468) adopted, which found that a student was not entitled to emergent relief in order to be allowed to participate in graduation where he failed to acquire the requisite number of credits after failing his French class; although the student would suffer irreparable harm, he had no legal right to participate in the ceremony, which was a privilege, and the school's policy seeking to prevent students from suffering from "senioritis" outweighed the harm to the student. *Buonasorte v. Bd. of Educ. of Mainland*, OAL Dkt. No. EDU 8012-09, 2009 N.J. AGEN LEXIS 840, Emergent Relief Decision (June 19, 2009).

Although *L. 2007, c. 331* (N.J.S.A. 18A:46-1.1) places the burden of proof and burden of production in a due process hearing on the school district, petitioners requested a due process hearing on September 11, 2007, prior to the January 13, 2008 effective date of the act; thus, petitioners were subject to the default rule of *Schaffer v. West*, 546 U.S. 49 (2005), which placed the burden of proof on the party seeking relief. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Program developed by a district for its multiply disabled students at the district's high school would provide an autistic student with a free, appropriate education and the transition from an out-of-district private school that the student had been attending before his parents moved to the district would not have any adverse effects. With the encouragement of his parents, the student would be able to make a successful transition into that program. *D.P. ex rel. D.P. v. Central Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 4543-08, 2008 N.J. AGEN LEXIS 990, Final Decision (December 3, 2008).

School district was ordered to revise IEP for a severely autistic 10-year-old child to incorporate a behavioral intervention plan developed by an out-of-state institute which advocated use of a "harness," to be only used outdoors to prevent the child from running away, and "face screening," which had the effect of sensual deprivation for a short period of time to calm the child down. Parent clearly satisfied requirement that child would suffer irreparable harm if relief was not granted where psychological experts at the institute opined that the child would likely regress if the successful techniques were stopped when he returned to New Jersey. The institute was willing to train the person who would be working with the child at no cost to the district. The district's tort liability concerns were speculative for the techniques were not dangerous and the child was far more likely to be injured if he were left to fend for himself. *S.M. ex rel. B.M. v. Passaic City Bd. of Educ.*, OAL Dkt. No. EDS 9950-08, 2008 N.J. AGEN LEXIS 802, Emergent Relief Decision (September 11, 2008).

Special education depends on good faith and conciliatory communication and efforts by the school system and the student's family, and consistent with this principle, parties are required to engage in a resolution session, after the filing of a request for due process, but before resort to the more formal, adversarial, time consuming, and expensive litigation process before an Administrative Law Judge. Consequently, when a board of education repeatedly proposed dates for resolution sessions and invited the father of a special education student to communicate in that regard but father persistently refused and/or failed to reasonably participate in the resolution meeting, thereby frustrating and obstructing the process, the father's request for a due process hearing was dismissed. *J.N. ex rel. M.N. v. Lenape Reg'l High School Dist. Bd. of Educ.*, OAL Dkt. No. EDS 8326-08, 2008 N.J. AGEN LEXIS 825, Final Decision (August 29, 2008).

Where the parent of a high-school student with cerebral palsy sought a comprehensive vocational assessment and functional ADL assessment to evaluate areas not specifically appraised by the school district, the district failed to follow required procedures for these specific evaluations, by not conducting the evaluation itself, nor providing the parents with information about where to obtain an independent evaluation, nor proceeding with a due process petition to prove why these evaluations were unnecessary. Even though the student was able to show that the district's actions violated its procedural obligations, she failed to prove that these violations resulted in a substantive deprivation because, even without the requested evaluations, she continued to make meaningful educational progress and both she and her parents were active participants in her IEP formulation process throughout the years. *Z.R. v. Fort Lee Bd. of Educ.*, OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Various settlement agreements did not trump or alter the clear language in the body of the IEP that "This student's educational disability precludes recoupment of lost skills in a reasonable period of time. Extended School Year (ESY) programming is recommended to prevent significant skill regression and should address the following area: Language, communication and occupational therapy," and student's stay-put rights pending the outcome of the due process hearing entitled him to a 2008 ESY program selected by his parents and related services in language, communication, and occupational therapy that prevent significant skill regression. *C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4899-08, 2008 N.J. AGEN LEXIS 800, Emergent Relief Decision (July 15, 2008).

Since an IEP team had determined that, in order for a 17-year-old student with severe emotional disturbances to receive a free appropriate public education, he needed to be educated in an out-of-district

placement and, to one degree or another, his parents agreed that an out-of-district placement was appropriate, the board of education was granted permission to release the student's school records to potentially appropriate out-of-district placements and his parents were compelled to cooperate with intake procedures at prospective placements. The parents

would be allowed to supplement the school records by forwarding any expert reports they had obtained regarding the student's psychological condition or educational status to the out-of-district schools and his in-district high school. Ramapo Indian Hills Reg'l High School Bd. of

*Educ. v. M.D. ex rel. A.D.*, OAL Dkt. No. EDS 07551-08, 2008 N.J. AGEN LEXIS 631, Final Decision (July 14, 2008).

Due process petition dismissed for parent's failure to participate in resolution session (20 U.S.C.A. 1415(f)(1)(B); N.J.A.C. 6A:14-2.7(h)); on the advice of his attorney, parent attended the session without the attorney and did not answer questions or discuss the issues. *J.N. ex rel. M.N. v. Lenape Reg'l High School Dist. Bd. of Educ.*, OAL Dkt. No. EDS 4110-08, 2008 N.J. AGEN LEXIS 406, Final Decision (June 26, 2008).

Emergency relief granted, amending IEP to supplement a student's Extended School Year (ESY) program by the district providing transportation to Camp Shriver, a no-charge Special Olympics program; student would suffer irreparable harm if she did not attend the program because she would regress in the area of social skills. Parent's request to incorporate social skills training in the district's four-hour ESY program, however, was denied. *S.P. ex rel. M.P. v. East Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4718-08, 2008 N.J. AGEN LEXIS 374 (June 24, 2008).

Emergency relief granted to allow student to participate in June 2008 high school graduation exercises, where the school board violated the student's IEP by advising him to make up his failed junior year English course at a community college without providing any supports and the student failed the community college course. Student's IEP had to be amended to provide an opportunity to make up the course, and thus *Alicia's Law*, N.J.S.A. 18A:7C-5.2, was applicable. School board's request to call out the student's name separately at the graduation ceremonies was denied. *K.R. and L.R. ex rel. B.R. v. Lawrence Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4688-08, 2008 N.J. AGEN LEXIS, Final Decision (June 17, 2008).

Emergent relief was denied to allow a 20-year-old high school student, suffering from cerebral palsy, who had completed the requirements for graduation from high school, to continue for a third twelfth grade year in high school, where parents alleged that student was not emotionally and/or academically ready for life beyond high school. There were genuine issues of material fact and in the law and it could not be said that, after the case was fully heard, it was probable that the parents would prevail on the merits of their claim. *J.K. ex rel. G.K. v. Moorestown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4388-08, 2008 N.J. AGEN LEXIS 896, Emergent Relief Decision (May 30, 2008).

"Stay put" section of the Individuals with Disabilities Education Act, 20 U.S.C.A. 1415(j), is unequivocal in that it states plainly that the child shall remain in the then current educational placement until the completion of the due process proceeding, and it overrides the emergent relief factors in N.J.A.C. 6A:14-2.7. The federal statute "functions, in essence, as an automatic preliminary injunction," substituting "an absolute rule in favor of the status quo for a tribunal's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of the hardships." *D.C. ex rel. J.C. v. Glen Rock Bd. of Educ.*, OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Even if N.J.A.C. 6A:14-2.7 applied, parents' petition for emergent relief seeking a temporary residential placement for their 16-year-old son at an out-of-district school would be denied where it did not appear that the legal right underlying the parents' claim was settled or that the parents had a substantial likelihood of success; cases cited by the district brought into question a district's responsibility to provide a residential placement where the need for that level of structure is attributable, not to the attainment of meaningful educational benefit, but rather to a mental health problem and where the parents are having difficulty in supervising the child at home. *D.C. ex rel. J.C. v. Glen Rock Bd. of Educ.*, OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Once a child is enrolled in a charter school, the charter school becomes responsible for the educational program the child is to receive. When the charter school child study team, in cooperation with the parents, determines that a child shall attend an out-of-district private

special education facility in order to receive the program determined to be appropriate to his needs, the resident board of education is not entitled to a due process hearing to challenge that placement. The resident board of education's challenge under N.J.S.A. 18A:36A-11 is to be made by filing an appeal before the Commissioner of Education under N.J.S.A. 18A:6-9. *Garfield Bd. of Educ. v. T.C. ex rel. J.C.*, OAL Dkt. No. EDS 3508-08, 2008 N.J. AGEN LEXIS 894, Final Decision (May 7, 2008).

Due process complaint dismissed, without prejudice, for failure of the parent to participate in the mandatory resolution session. *T.H. ex rel. S.H. v. Summit City Bd. of Educ.*, OAL Dkt. No. EDS 03941-08, 2008 N.J. AGEN LEXIS 348, Final Decision (April 9, 2008).

Mother's request for emergent relief was denied for a stay-put order to prevent implementation of IEP by the N.J. Department of Children and Families for 21-year-old Pennsylvania resident with autism and schizo effective disorder, who was involuntarily committed while visiting her father in New Jersey. Previous placements were not viable, and the law does not support the imposition of a stay-put in interstate student transfer situations. *P.C. ex rel. G.C. v. N.J. Dep't of Children & Families*, OAL DKT. NO. EDS 3579-08, 2008 N.J. AGEN LEXIS 203, Emergent Relief Decision (March 26, 2008).

Claims dismissed because parent refused and/or failed to participate in resolution meeting, thereby frustrating and obstructing the process. *J.T. and L.T. ex rel. G.T. v. Washington Twp. Bd. of Educ.*, OAL DKT. NO. EDS 903-08, 2008 N.J. AGEN LEXIS 229, Final Decision (March 26, 2008).

Emergency home instruction for not more than 45 calendar days was ordered where a student with an IEP assaulted his teacher and had previously assaulted her and other children, requiring that he be physically restrained on four separate occasions, and his parents and the school district could not agree on placement. *Ridgewood Village Bd. of Educ. v. J.R. and K.R. ex rel. J.R.*, OAL DKT. NO. EDS 1627-08, 2008 N.J. AGEN LEXIS 65, Emergent Relief Decision (February 7, 2008).

Emergency relief was denied where parents failed to demonstrate that school officials acted in an arbitrary, capricious, unreasonable, or unlawful manner by not granting credit to high school student in four major subjects because she did not attend classes regularly and otherwise missed significant instructional time; nor was it shown that school officials acted unreasonably in offering the student the opportunity to earn academic credit by taking subject matter examinations. *M.N. and B.N. ex rel. M.N. v. Hanover Park Reg'l High Bd. of Educ.*, OAL DKT. NO. EDS 11436-07, 2007 N.J. AGEN LEXIS 803, Final Decision (December 13, 2007).

Clerical error that referred to the student as a sixth grader was insufficient reason to consider placement in the sixth grade, when the student had yet to successfully complete the fifth grade. *Z.I. ex rel. R.I. v. Irvington Twp. Bd. of Educ.*, OAL DKT. NO. EDS 11605-07, 2007 N.J. AGEN LEXIS 804, Final Decision (December 11, 2007).

Parent's request for emergency relief for temporary placement of child at a different school than the one she had been attending, pending the disposition of her due process petition, was denied; the "stay-put" provision of the IDEA (20 U.S.C.A. 1415) required that the child remain in her current placement at the early childhood learning school until all issues of the due process petition were resolved. The stay-put provision of the IDEA is an absolute rule in favor of the status quo, overriding discretionary consideration of the emergent relief factors in N.J.A.C. 6A:14-2.7(s), such as irreparable harm and likelihood of success on the merits. *E.S. ex re. J.S. v. Union Twp. Bd. of Educ.*, OAL DKT. NO. EDS 11355-07, 2007 N.J. AGEN LEXIS 744, Emergent Relief Decision (November 1, 2007).

Emergency relief granted by way of "stay put" to parents allowing child to continue education at the second-grade level pursuant to child's IEP from previous school. Parents had not agreed to terms in proposed IEP submitted for new school year, parents timely filed for due process, and, therefore, they were entitled to child's placement at same school and in surroundings proven suitable for his visual impairments. *M.H. ex*



rel. B.H. v. Mantua Twp. Bd. of Educ., OAL Dkt. No. EDS 8335-07, 2007 N.J. AGEN LEXIS 715, Emergent Relief Decision (October 30, 2007).

Emergency relief was denied parents of ninth-grade student (with above-average intelligence) seeking his education at home until a hearing could be held to determine whether he should be classified and whether an IEP should be provided for him. Although student's doctors testified that he suffered from medical problems, including psychiatric depression and/or depressive disorder, parents had not shown that, when the case was fully heard, they would probably succeed in their claim that student should be classified for Special Education and related services and that he should be educated at home; similarly, the board of education had not shown that it would probably succeed on its claims. H.S. ex rel. A.S. v. Moorestown Twp. Bd. of Educ., OAL Dkt. No. EDS 8402-07, 2007 N.J. AGEN LEXIS 681, Emergent Relief Decision (October 17, 2007).

Parents' request for immediate transmission of case (involving nine-year-old with disabilities, including mental retardation) to OAL for hearing was denied given the policy of encouraging settlement and given the Board of Education's contention that settlement remained viable and that the case should be subject to a resolution session first. S.W. ex rel. D.W. v. East Windsor Reg'l Bd. of Educ., OAL Dkt. No. EDS 8431-07, 2007 N.J. AGEN LEXIS 682, Final Decision (October 17, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied where request did not involve one of the issues enumerated in 6A:14-2.7(r). There was nothing in the record to reflect that a one-on-one aide had been previously provided and was no longer provided; on the contrary, the record was clear that the child was in a self-contained classroom in which there were a teacher and two aides during the past year. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Applicant must meet all four prongs of the test set out in N.J.A.C. 6A:14-2.7 in order to prevail on an application for emergent relief. The first prong of the test is mandatory, i.e., the use of the word "will" indicates that there must be a high degree of certainty, not just a possibility, that irreparable harm will occur. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied because although child's doctor did indicate that an aide was appropriate, he failed to specify that a one-on-one aide was required nor was it clear that he was presented with a description of the accommodations which the district had indicated it would be making. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Parents' petition for a due process hearing regarding their disabled child was dismissed where the parents failed to attend a resolution meeting and cancelled the mediation that was scheduled between the parties. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

N.J.A.C. 6A:14-2.7(h) is consistent with New Jersey's public policy strongly favoring settlement of claims; settlements permit parties to resolve disputes on mutually acceptable terms rather than exposing themselves to the uncertainties of litigation. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

Parent's claim against a board of education seeking legal and learning consultant fees was dismissed because administrative law judges do not have authority to grant claims for attorney fees or expert fees in special education cases. W.Z. ex rel. G.Z. v. Princeton Reg'l Bd. of Educ., OAL

DKT. NO. EDS 2563-07, 2007 N.J. AGEN LEXIS 227, Final Decision (April 26, 2007).

Parents' petition for due process dismissed for failure to participate in resolution meeting. R.W. and A.W. ex rel. A.W. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2378-07, 2007 N.J. AGEN LEXIS 226, Final Decision (April 24, 2007).

Stay-put relief granted to continue student's one-on-one aide during at least 61% of his school day until the completion of due process in the matter. Under IDEA's stay-put provision, the intent is to maintain some stability and continuity in placement while actual placement is being determined. D.W. ex rel. S.W. v. Commercial Twp. Bd. of Educ., OAL DKT. NO. EDS 276-07, 2007 N.J. AGEN LEXIS 35, Final Decision (January 25, 2007).

District was ordered to continue Discrete Trial Instruction to four-year-old brothers in a home setting, rather than elsewhere, during the Extended School Year (ESY), until either the conclusion of the ESY program or any determination in a plenary proceeding that the location of the program should be changed. C.W. ex rel. C.W. v. Oaklyn Borough Bd. of Educ., OAL Dkt. No. EDS 4579-06, 2006 N.J. AGEN LEXIS 413, Emergent Relief Decision (July 6, 2006).

Emergency relief granted to school district to allow it to commence and conduct the necessary assessments of child classified as disabled (classification category of "specific learning disability") in order to perform psychological, educational, and social evaluations; school district's request to enjoin or otherwise prevent the parents from engaging in private evaluations at their own expense was denied. Matawan-Aberdeen Reg'l Bd. of Educ. v. H.G. ex rel. S.G., OAL Dkt. No. EDS 8330-05, 2005 N.J. AGEN LEXIS 658, Final Decision (November 2, 2005).

Parents were not entitled to an emergency "stay put" order to keep their child in an out-of-district high school, as school districts are not required to continue to provide services to a student from another district where no contractual relationship between the two districts ever existed that could be construed to require the foreign district to provide FAPE. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Emergency relief for special education student denied. C.Y. v. Deerfield Township Board of Education, 97 N.J.A.R.2d (EDS) 59.

No change may be made in placement of handicapped pre-schooler without concurrence of both parties. C.W. v. Bernards Township Board of Education, 96 N.J.A.R.2d (EDS) 359.

District failed to show emergency which would justify summary declassification of pupil currently classified as perceptually impaired. Southern Gloucester Regional School District v. C.W., 96 N.J.A.R.2d (EDS) 357.

State-operated school offering special education was not proper party in due process hearing regarding implementation of individualized education program (IEP). A.B. v. Jersey City Board of Education and Office of Education, 96 N.J.A.R.2d (EDS) 295.

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 in-

dividualized 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 after 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.

#### **6A:14-2.8 Discipline/suspension/expulsions**

(a) For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.

2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

(b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a

change of placement for a student with a disability who violates a school code of conduct.

(c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:

1. The removal is for more than 10 consecutive school days; or

2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.

(d) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. §1415(k), as amended and supplemented. (See chapter Appendix A.) However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

(e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

1. When it is determined that a series of short-term removals is not a change of placement, school officials, in consultation with the student's special education teacher and case manager shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

2. When a removal constitutes a change of placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

(f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury under 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR

§§300.1 et seq., or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR §§300.1 et seq., the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR §§300.1 et seq., incorporated herein by reference. However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

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

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

Rewrote the section.

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

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

Rewrote (a); recodified (b) through (e) as (c) through (f); added new (b); and rewrote present (d) and (f).

### Case Notes

State regulatory requirement that special education students removed from placement for disciplinary reasons for more than 10 cumulative or consecutive school days in a school year be provided services enabling them to "progress appropriately" in curriculum and "advance appropriately" toward individual goals did not violate students' right under the Individuals with Disabilities Education Act (IDEA) to free appropriate public education (FAPE); language at issue mirrored federal regulations, and appropriate progress and advancement amounted to "meaningful benefit" involving "significant learning," precisely the objective of a FAPE. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations concerning discipline, suspension, or expulsion of special education students, incorporating comprehensive provisions of the Individuals with Disabilities Education Act (IDEA) and federal special education regulations, satisfied IDEA's requirement that state adopt rules governing special education discipline, where provisions thus incorporated were accessible and understandable without adopting separate state rules for their implementation. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations concerning discipline, suspension, or expulsion of special education students, incorporating comprehensive provisions of the Individuals with Disabilities Education Act (IDEA) and federal special education regulations, were not rendered arbitrary or capricious by reason of their failure to define certain terms used in IDEA. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations excluding parents from determination of level of education services required to provide free appropriate public education (FAPE) for students suspended for more than ten days in a school year in suspensions not constituting change in placement did not infringe upon parents' rights under the Individuals with Disabilities Education Act (IDEA), where challenged state regulation mirrored federal regulations governing same subject matter. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State's failure to adopt special education regulation requiring consultation with student's parents in determining point at which series of disciplinary removals of fewer than ten days constitutes change in placement did not infringe upon parents' right under the Individuals with Disabilities Education Act (IDEA) to be involved in all disciplinary determinations; nothing in IDEA or its federal regulations specified particular persons entitled to determine whether series of short-term removals constitute change in placement, and such determination was therefore implicitly left to discretion and determination of the states. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Discipline imposed failed to comply with the requirements of the IDEA and New Jersey implementing regulations when a disabled 16-year-old student brought a pocket knife to school with a blade of less than 2.5 inches; the student was removed from school for a period equal to 81 calendar days, which exceeded the IDEA's provisions. *K.R. and J.R. ex rel. N.R. v. Vineland City Bd. of Educ.*, OAL DKT. NO. EDS 2321-07, 2008 N.J. AGEN LEXIS 22, Final Decision (January 22, 2008).

Parents of an eighth-grade student who was suspended for five days on his second day attending the school were not entitled to emergency relief in the form of the immediate return of the student to school pending a due process hearing; under the circumstances of a short suspension and the provision of home-bound instruction, there was no significant break in the student's educational services and he would not suffer irreparable harm. *S.W.-R. ex rel. E.R. v. Ocean Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4148-07, 2007 N.J. AGEN LEXIS 382, Emergent Relief Decision (May 29, 2007).

School district's request to remove high school student classified as "emotionally disturbed" to an interim alternative educational setting was granted based on the student's involvement in numerous incidents of violence and the district's assessment that there was a clear danger. *Lawrence Twp. Bd. of Ed. v. D.F. ex rel. D.F.*, OAL DKT. NO. EDS 12056-06, 2007 N.J. AGEN LEXIS 26, Final Decision (January 9, 2007).

Discipline for misconduct due to underlying disability found inappropriate. *R.G. v. West Orange Board of Education*, 97 N.J.A.R.2d (EDS) 122.

No compensatory education entitlement for special education student undermining procedural requirements. *R.S. v. Southern Gloucester County Regional Board of Education*, 97 N.J.A.R.2d (EDS) 22.

High school student's violent behavior warranted continued suspension pending re-evaluation. *Greater Egg Harbor Board of Education v. P.N., M.N. and J.N.*, 97 N.J.A.R.2d (EDS) 12.

Teacher's petition to bring expulsion proceedings against student who assaulted her was dismissed where assault arose from student's handicap. *Barna v. Irvington Board of Education*, 96 N.J.A.R.2d (EDU) 598.

Request to return suspended kindergartner to classroom pending completion of evaluation was denied due to student's continued aggressive behavior. *M.J. v. Norwood Board of Education*, 96 N.J.A.R.2d (EDS) 193.

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.

**6A:14-2.9 Student records**

(a) All student records shall be maintained according to N.J.A.C. 6A:32.

(b) The parent, adult student or their designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of education under N.J.A.C. 6A:32 without unnecessary delay and before any meeting regarding the IEP.

(c) Any consent required for students with disabilities under N.J.A.C. 6A:32 shall be obtained according to N.J.A.C. 6A:14-1.3 "consent" and 2.3(a) and (b).

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

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

Amended N.J.A.C. references throughout.

**Case Notes**

Trial judge properly balanced alleged sexual abuse victims' right to privacy with defendant's right of confrontation by examining in camera confidential school records of victims sought by defendant in connection with issue of victims' competency to testify. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

Trial judge's denial of defendant's pretrial motion to examine confidential school records of alleged sexual abuse victims, in connection with the issue of victims' competency to testify, did not violate the right of confrontation. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

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.

**6A:14-2.10 Reimbursement for unilateral placement by parents**

(a) Except as provided in N.J.A.C. 6A:14-6.1(a), the district board of education shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district made available a free, appropriate public education and the parents elected to enroll the student in a nonpublic school, an early childhood program, or an approved private school for students with disabilities.

(b) If the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic school, an early childhood program, or approved

private school for students with disabilities without the consent of or referral by the district board of education, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge according to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if it does not meet the standards that apply to the education provided by the district board of education.

(c) The parents must provide notice to the district board of education of their concerns and their intent to enroll their child in a nonpublic school at public expense. The cost of reimbursement described in (b) above may be reduced or denied:

1. If at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district;

2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;

3. If prior to the parents' removal of the student from the public school, the district proposed a reevaluation of the student and provided notice according to N.J.A.C. 6A:14-2.3(g) and (h) but the parents did not make the student available for such evaluation; or

4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(d) The cost of the reimbursement for enrollment in a nonpublic school shall not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if the conditions in (d)3 and 4 below are met, and, at the discretion of a court or an administrative law judge, may not be reduced if the conditions in (d)1 and 2 below are found to exist:

1. The parent is illiterate and cannot write in English;

2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;

3. The school prevented the parent from providing such notice; or

4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

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 a reference to early childhood programs; and rewrote (b).

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

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

In (a) and (b), substituted "students with disabilities" for "the disabled"; in (b), inserted "for placements in unapproved schools" in the last sentence; in (c)3, updated the N.J.A.C. reference; in (d), rewrote the introductory paragraph.

### 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.

Parents' claim for tuition reimbursement for their unilateral placement of sixth grade student out-of-district was denied because the ALJ found that the district's proposed IEP appropriately addressed the student's significant weaknesses in social interaction and pragmatic language and continued the successful program used in fifth grade. E.S. and J.S. ex rel. H.S. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 8569-07, 2008 N.J. AGEN LEXIS 377, Final Decision (June 6, 2008).

Parents were entitled to reimbursement for their unilateral out-of-district placement of fifth-grade multiply disabled student at the Orchard Friends School because the program offered by the school district was not appropriate to meet the student's individual needs and confer meaningful educational benefit; for example, student needed small classes with a low student teacher ratio and teachers trained in multi-sensory teaching strategies, but the district's IEP proposed full-size mainstream classes for science, social studies, and all special classes, including physical education, and made no provision for social skills training. J.D. ex rel. C.D. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 8122-06, 2008 N.J. AGEN LEXIS 231, Final Decision (March 24, 2008).

Reimbursement for unilateral placement was denied where it was found that parents failed to notify the district of their dissatisfaction with the proposed or prior IEP for their multiply disabled daughter, and they further failed to give notice, within the time prescribed by N.J.A.C. 6A:14-2.10, of their intention to unilaterally place her in a private school with the expectation that the district reimburse them; the parents' failure to provide notice made it impossible for the district to address their concerns prior to removal. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL Dkt. No. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Only reasonable interpretation of N.J.A.C. 6A:14-2.10(c)(2) is that it includes a requirement to notify the school district of an intent to seek reimbursement. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL Dkt. No. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Parents' failure to sign the IEP (other than the initial IEP), without more proof, does not meet the requirement of N.J.A.C. 6A:14-2.10(c) that the parents inform the IEP team of their objection to the IEP. D.A. and A.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL Dkt. No. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Reimbursement for parents' unilateral placement of 11-year-old autistic/multiply disabled student in an out-of-district school (New Grange School) was denied, where parents were concerned about their son's transition to a large middle school; ALJ found district's witnesses, who had observed the student in an academic setting on a daily or

weekly basis, to be more detailed and credible concerning the student's academic and social progress, and the opinions of the parent's expert witnesses to be somewhat speculative about what might occur in middle school. Student had successfully completed fifth grade in his mainstreamed class. M.P. ex rel. E.P. v. South Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 2950-07, 2007 N.J. AGEN LEXIS 775, Final Decision (November 16, 2007), aff'd, 2008 U.S. Dist. LEXIS 103520 (D.N.J. December 23, 2008) (unpublished opinion).

Parents were entitled to reimbursement for unilateral placement of their daughter for three consecutive school years in an out-of-district school where the district school failed to develop an IEP for their daughter prior to her entering the fifth grade. P.R. and C.R. ex rel. K.R. v. Roxbury Twp. Bd. of Educ., OAL Dkt. No. EDS 09874-06, 2007 N.J. AGEN LEXIS 778, Final Decision (October 31, 2007).

Parents were entitled to reimbursement for unilateral placement of their preschool child, who had language difficulties, in a private preschool in conjunction with a home-based applied behavior analysis (ABA) program, where the school district's ABA program did not appropriately address the child's needs. G.V. and L.V. ex rel. J.V. v. Wyckoff Twp. Bd. of Educ., OAL Dkt. No. EDS 11295-06, 2007 N.J. AGEN LEXIS 687, Final Decision (October 26, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL Dkt. No. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Reimbursement denied for unilateral placement of a four-year-old child with autism in a private school (Somerset Hills), where the school district properly considered the child's potential and educational needs and the proposed IEP was reasonably calculated to provide him with meaningful educational benefit in the least restrictive environment. Parents had a very difficult burden, since the District program had never been implemented. While parents' experts emphasized the need for a one-to-one student to teacher ratio, the district's witnesses emphasized that they would mold their program to fit the child's needs; proposed district preschool disabled program utilized approximately 29 hours of ABA intervention. G.B. ex rel. J.B. v. Bridgewater-Raritan Reg'l Bd. of Educ., OAL Dkt. No. EDS 4075-06, 2007 N.J. AGEN LEXIS 405, Final Decision (June 13, 2007), aff'd, 2009 U.S. Dist. LEXIS 15671 (D.N.J. February 27, 2009) (mem.).

Parents of a nine-year-old autistic student failed to show that a school district did not provide a legitimate offer of FAPE to their son, and, thus, their claim for reimbursement for a home schooling program was denied; further, parents' actions in the context of the entire matter were found to be unreasonable. In addition, limiting the child's studies to a home environment was more constrictive than his prior placement and did not appear to coincide with the parents' desire to have him eventually mainstreamed. R.V. and D.V. ex rel. S.V. v. Randolph Twp. Bd. of Educ., OAL Dkt. No. EDS 1336-2006, 2006 N.J. AGEN LEXIS 742, Final Decision (September 13, 2006).

Reimbursement for unilateral placement of student with autistic spectrum disorder in an out-of-district high school was denied, where parents did not inform the district at the last IEP meeting in June 2003 that they were considering an out-of-district placement and their actions were in bad faith; parents had hired a tutor the year before to prepare the student for entrance examinations at the private school, a letter for admission was dated Dec. 2002, and they did not attempt to negotiate a better IEP with the district. R.P. and V.P. ex rel. E.P. v. Ramsey Bd. of Educ., OAL Dkt. No. EDS 11682-04, 2006 N.J. AGEN LEXIS 745, Final Decision (September 5, 2006), aff'd, 2008 U.S. Dist. LEXIS 70884 (D.N.J. Sept. 17, 2008) (unpublished opinion) (affirming result, but rejecting certain rulings of the ALJ).

Reimbursement for unilateral placement of 18-year-old student at a private residential school post-twelfth grade was denied; the district offered the student a program for that year that addressed both academic and transition needs, with a half day school-to-work component. 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. 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).

Student was appropriately declassified and parents' application for tuition reimbursement for unilateral placement and for compensatory education for speech services was denied where burden was on parents to show that student could not achieve meaningful educational progress at the kindergarten in the district and that the private school with an aide was appropriate, but parties presented opposing appraisals of student's abilities. Although reports in evidence suggested student suffered from autism, the authors of the reports were not presented and the doctor who did testify could not identify specific behaviors that would qualify as severe or pervasive as required by N.J.A.C. 6A:14-3.5. W.H. ex rel. A.H. v. Bloomsbury Bd. of Educ., OAL Dkt. No. EDS 8666-05 and EDS 8667-05, 2006 N.J. AGEN LEXIS 488, Final Decision (August 2, 2006).

That preschool child with autism spectrum disorder had not "previously received special education and related services from the district of residence" within the meaning of N.J.A.C. 6A:14-2.10(b) did not bar parents from seeking reimbursement for the costs of private placement; the New Jersey regulation cannot serve as a basis for providing any less relief than is available under *Burlington*, 471 U.S. 359 (1985), and a contrary interpretation would place parents of preschool children in the untenable position of acquiescing to an inappropriate placement in order to preserve their right to reimbursement. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Parent of a child with a rare chromosomal defect who sought reimbursement for unilateral placement was entitled to one-half of the cost of tuition at an out-of-district school for two school years where, due to procedural IEP deficiencies, the in-district school failed to offer the child a FAPE; balancing the equities, the cost-sharing agreement in place for the child's kindergarten and first-grade years as a result of a settlement was extended to encompass the second- and third-grade years in dispute. F.D. ex rel. F.D. v. Hillsborough Twp. Bd. of Educ., OAL DKT. NO. EDS 226-05, 2006 N.J. AGEN LEXIS 485, Final Decision (July 31, 2006).

School board was not required to reimburse parents for unilateral placement of special education student (with reading problems) in an out-of-district school where the Board had presented persuasive proof that the placement of the student in its middle school would have met the requirements for a free and appropriate education. While the out-of-district school had an excellent reputation and it was possible that its

program would have been better suited for student's needs, the law is clear: the Board does not have to provide for the best possible placement, its legal obligation is to provide for an appropriate education. Additionally, out-of-district school did not meet state and federal requirement of providing for education in the least restrictive environment. J.S. ex rel. M.S. v. Florence Twp. Bd. of Educ., OAL Dkt. No. EDS 8575-01, 2005 N.J. AGEN LEXIS 929, Final Decision (December 19, 2005).

Parents were not entitled to reimbursement for the placement of their disabled child in an out-of-district school where the child's mother had not given the school district the opportunity to provide the child with a meaningful FAPE; thus, there was no way of determining whether or not his IEP met the requirements of IDEA. M.S. ex rel. M.S. v. Mullica Twp. Bd. of Educ., OAL Dkt. No. EDS 4741-05, 2005 N.J. AGEN LEXIS 657, Final Decision (November 9, 2005), aff'd in part, and rev'd in part on other grounds, 485 F. Supp. 2d 555 (D.N.J. 2007), aff'd per curiam, 263 Fed. Appx. 264, 2008 U.S. App. LEXIS 2737 (3d Cir. 2008).

Parents were entitled to reimbursement for unilateral placement of dyslexic child in private school where school district failed to satisfy its burden of showing that the program and placement it offered at public expense were appropriate for student. The nature and severity of child's learning, attention, and emotional problems were such that he required a small, protected, and structured educational setting with intensive remedial services for pupils with dyslexia but his proposed IEP was not reasonably calculated to provide him with a meaningful educational benefit because it would not have provided systemic reading instruction addressing all of the components of the phonological process throughout the academic day—private school would provide such benefit. R.P. ex rel. C.P. v. Princeton Reg'l Bd. of Educ., OAL Dkt. No. EDS 8360-04, 2005 N.J. AGEN LEXIS 558, Final Decision (September 26, 2005).

School board was entitled to summary decision because parents seeking reimbursement for child's tuition had unilaterally removed their child from public school without adequate notice to the school board. Parents, through their signature, agreed to the 2004-05 IEP and made no mention at the IEP meeting of any intention to withdraw child from the public school and only provided notice of their intention to withdraw the child seven days after signing a contract with the private school. D.D. and N.D. ex rel. A.D. v. Montclair Bd. of Educ., OAL Dkt. No. EDS 9295-05, 2005 N.J. AGEN LEXIS 618, Final Decision (October 17, 2005).

Reimbursement for unilateral placement of high school student at a therapeutic boarding school in Utah was denied where there was insufficient notice and insufficient involvement with the child study team. L.F. and D.F. ex rel. J.F. v. Morris Bd. of Educ., OAL DKT. NO. EDS 11681-04, 2005 N.J. AGEN LEXIS 560, Final Decision (September 26, 2005).

Parents of fourth-grade student were entitled to reimbursement for unilateral placement at a private school (Winston School); the student had made very little progress toward reading on his own during four years in the district schools. J.S. ex rel. M.S. v. Springfield Twp. Bd. of Educ., OAL DKT. NO. EDS 11220-04N, 2005 N.J. AGEN LEXIS 490, Final Decision (September 9, 2005).

School board pays for private school program where individualized placement program fails to meet special student's needs. M.E. v. Ridgewood Board of Education, 97 N.J.A.R.2d (EDS) 27.

## SUBCHAPTER 3. SERVICES

## Case Notes

State special education regulation limiting procedural safeguards applicable to disciplinary suspensions of students not yet receiving special education services to those students with respect to whom school district had already determined that evaluation for eligibility for services was warranted improperly narrowed scope of protections available under the Individuals with Disabilities Education Act (IDEA); under IDEA, procedural safeguards applied as soon as parent requested evaluation of a student or one of student's teachers expressed concern about student's behavior or performance to director of special education or other school district personnel. *Baer v. Klagholz*, 771 A.2d 603 (2001).

**6A:14-3.1 General requirements**

(a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.

(b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant and a school social worker. All child study team members shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available to provide all needed services during the hours students are in attendance.

1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the New Jersey Department of Education.

(c) Specialists in the area of disability include, but are not be limited to, child study team members, as well as speech-language specialists, occupational therapists, physical therapists, audiologists, school nurses, advance practice nurses and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational

certificate and a license are required to carry out activities under this chapter, the professional shall be appropriately certified and licensed.

(d) Child study team members and, to the extent appropriate, specialists in the area of disability:

1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;

2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;

3. May provide services to the educational staff with regard to techniques, materials and programs. Services include, but are not limited to, the following:

i. Consultation with school staff and parents;

ii. Training of school staff; and

iii. The design, implementation and evaluation of techniques addressing academic and behavioral difficulties;

4. May deliver appropriate related services to students with disabilities;

5. May provide preventive and support services to nondisabled students; and

6. May participate on Intervention and Referral Services teams pursuant to N.J.A.C. 6A:16-8.

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), inserted "available to provide all needed services" and added (b)1; in (c), deleted "may" preceding "include", inserted "are" following "but", and inserted "appropriately" in the last sentence; rewrote (d).

**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.

The District board of education could not abolish employee's social worker position while maintaining child study team (CST) and contracting outside to replace employee's position. *Vicenzino v. Bedminster Tp. Bd. of Educ.*, 312 N.J.Super. 243, 711 A.2d 904, 126 Ed. Law Rep. 1092 (N.J.Super.A.D. 1998).

Initial Decision (2008 N.J. AGEN LEXIS 70) adopted, which rejected a school social worker's argument that the district's decision to eliminate a position of school social worker did not satisfy the "good cause" test since the district then added a learning disabilities teacher-consultant position; because the role of the learning disabilities teacher-consultant is vastly different from the role of school social worker, and has different certification requirements, the positions are not fungible. *Aiello v. Bd. of Educ. of Westwood Reg'l School Dist.*, OAL Dkt. No. EDU 7986-07, 2008 N.J. AGEN LEXIS 263, Commissioner's Decision (March 20, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 1006) adopted, which concluded that a board of education's action abolishing petitioner's position of school social worker and contracting with a jointure commission for the provision of all its child study team services was proper under N.J.S.A. 18A:46-5.1, N.J.A.C. 6A:14-5.1, and existing case law; in addition, the ALJ found that petitioner failed to present any credible evidence that reasons of economy were merely a pretext for the board's action. *Asaro v. Bd. of Educ. of Moonachie*, OAL Dkt. No. EDU 9309-99, Commissioner's Decision (December 22, 2006).

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).

**6A:14-3.2 Case manager**

(a) A case manager shall be assigned to a student when it is determined that an initial evaluation shall be conducted. Child study team members or speech-language specialists when they act as members of the child study team shall be designated and serve as the case manager for each student with a disability.

(b) The case manager shall coordinate the development, monitoring and evaluation of the effectiveness of the IEP. The case manager shall facilitate communication between home and school and shall coordinate the annual review and reevaluation process.

(c) The case manager shall:

1. Be knowledgeable about the student's educational needs and program;
2. Be knowledgeable about special education procedures and procedural safeguards;
3. Have an apportioned amount of time for case management responsibilities; and
4. Be responsible for transition planning.

**6A:14-3.3 Location, referral and identification**

(a) Each district board of education shall develop written procedures for students age three through 21, including students attending nonpublic schools located within the district regardless of where they reside, who reside within the local school district with respect to the location and referral of students who may have a disability due to physical, sensory, emotional, communication, cognitive or social difficulties.

1. The requirements of this section apply to highly mobile students with disabilities, such as migrant and homeless students, and to students who may have a disability even though they are advancing from grade to grade.

2. The activities undertaken to locate nonpublic school students with disabilities shall be comparable to activities undertaken to locate public school students with disabilities. In addition, each district board of education shall consult with appropriate representatives of nonpublic school students on how to carry out these activities.

i. For preschool age students enrolled in early childhood programs, the child-find obligations, including evaluation for eligibility for special education and related services, shall be the responsibility of the district of residence of the parent of the student.

ii. For nonpublic elementary or secondary school students, the child-find obligations shall be the responsibility of the district of attendance in accordance with N.J.A.C. 6A:14-6.1.

3. The procedures shall include:

i. Utilizing strategies identified through the Intervention and Referral Services program according to N.J.A.C. 6A:16-8, as well as other general education strategies;

ii. Referral by instructional, administrative and other professional staff of the local school district, parents and state agencies, including the New Jersey Department of Education and agencies concerned with the welfare of students.

iii. Evaluation to determine eligibility for special education and related services; and/or

iv. Other educational action, as appropriate.

(b) Interventions in the general education setting shall be provided to students exhibiting academic difficulties and shall be utilized, as appropriate, prior to referring a student for an evaluation of eligibility for special education and related services.

1. Within Abbott districts, the system of assessment and interventions within general education programs according to N.J.A.C. 6A:10A-3.1 shall be implemented for all students who have reading as their primary area of difficulty.

(c) The staff of the general education program shall maintain written documentation, including data setting forth the type of interventions utilized, the frequency and duration of each intervention, and the effectiveness of each intervention.

1. When it is determined through analysis of relevant documentation and data concerning each intervention utilized that interventions in the general education program have not adequately addressed the educational difficulties, and it is believed that the student may have a disability, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

2. A determination whether or not to conduct an evaluation shall be made in accordance with (e) below.

(d) A direct referral to the child study team may be made when it can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for special education services under this chapter is warranted without delay.

1. The parent may make a written request for an evaluation to determine eligibility for services under this chapter. Such a request shall be considered a referral and shall be forwarded without delay to the child study team for consideration.

(e) When a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent and the regular education teacher of the student who is knowledgeable about the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district's programs, shall be convened within 20 calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3.

1. To facilitate the transition from early intervention to preschool, a child study team member of the district board of education shall participate in the preschool transition planning conference arranged by the designated service coordinator from the early intervention system. The district representative at the transition planning conference shall:

i. Review the Part C Early Intervention System Individualized Family Service Plan;

ii. Provide the parents written district registration requirements;

iii. Provide the parents written information on available district programs for preschool students, including options available for placement in general education classrooms; and

iv. Provide the parent a form to utilize to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility.

2. Preschoolers with disabilities shall have their IEPs implemented no later than age three. To assure that preschoolers with disabilities have their initial IEPs implemented no later than age three, a written request for initial evaluation shall be forwarded to the district at least 120 days prior to the preschooler attaining age three.

i. For a child receiving Early Intervention System services, the form to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility shall be submitted to the district board of education with the request for initial evaluation.

3. When a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.

i. If it is determined that a speech-language assessment will be conducted, it may be utilized as one of the two required assessments in N.J.A.C. 6A:14-3.4(f).

4. For students ages five to 21, when the suspected disability includes a language disorder, the child study team, the parent, a speech-language specialist and the general education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs shall participate in the meeting to decide whether to evaluate and the nature and scope of the evaluation.

5. For students ages five to 21, when the suspected disability is a disorder of voice, articulation and/or fluency only, the decision to evaluate and the determination of the

nature and scope of the evaluation shall be according to (e) above, except that the meeting shall include the speech-language specialist, the parent and the general education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs.

(f) When it is determined that an evaluation for eligibility for services under this chapter is warranted, the student shall be considered identified as potentially a student with a disability. If the student is removed for disciplinary action, limitations on the amount of time the student is removed and the requirement to provide services shall be consistent with procedures in N.J.A.C. 6A:14-2.8. Additionally, in accordance with 20 U.S.C. §1415(k)(5), protections for children not yet eligible for special education and related services shall apply. (See chapter Appendix A.)

(g) Audiometric screening according to N.J.A.C. 6A:16-2.2(e)3 shall be conducted for every student referred to the child study team for a special education evaluation.

(h) Vision screening shall be conducted by the school nurse for every student referred to the child study team for a special education evaluation.

(i) The New Jersey Department of Education incorporates by reference the provisions of the Individuals with Disabilities Education Act of 2004 at 20 U.S.C. §1412(c)3 and its implementing regulations at 34 CFR §§300.1 et seq. regarding child find. (See chapter Appendix E.)

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

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

In (e), rewrote the introductory paragraph.

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

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

In (d)2, deleted a reference to adult students; and rewrote (a), (e) and (f).

Amended by R.2001 d.397, effective November 5, 2001.

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

In (f), added new last sentence; added (i).

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

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

Amended N.J.A.C. references in (a)3i and (g).

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

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

Rewrote the section.

#### Case Notes

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 requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Edu-

cation Act (IDEA) that each state have policies and procedures to ensure that practical method for locating disabled students be developed; neither IDEA nor its regulations established any particular "child find" method to be used, or require states to establish uniform methods. *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).

When it becomes apparent to teachers that a student may have a disability, they must refer the child directly to the child study team for a special education evaluation. They may not try other interventions first. *Montclair Bd. of Educ. v. S.W. ex rel. T.M.*, OAL DKT. NO. EDS 12937-05, 2006 N.J. AGEN LEXIS 47, Final Decision (January 12, 2006).

Where teachers had sufficient reason to conclude that a student might have a disability that was inhibiting him from receiving a free and appropriate program of education, based on a drastic change in his grades and behavior, the board of education was authorized to conduct an initial evaluation of the student. *Montclair Bd. of Educ. v. S.W. ex rel. T.M.*, OAL DKT. NO. EDS 12937-05, 2006 N.J. AGEN LEXIS 47, Final Decision (January 12, 2006).

#### 6A:14-3.4 Evaluation

(a) The child study team, the parent and the regular education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs shall:

1. Review existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers, and consider the need for any health appraisal or specialized medical evaluation;

2. On the basis of the review in (a)1 above identify what additional data, if any are needed to determine:

- i. Whether the student has a disability under this chapter;

- ii. The present levels of academic and functional achievement and related developmental needs, and educational needs of the student; and

- iii. Whether the student needs special education and related services; and

3. Determine which child study team members and/or specialists shall conduct each assessment that is part of the evaluation.

(b) Prior to conducting any assessment as part of an initial evaluation, the district shall request and obtain consent to evaluate according to N.J.A.C. 6A:14-3.3(e).

(c) If the parent refuses to provide consent to conduct the initial evaluation, the district may file for a due process hearing pursuant to N.J.A.C. 6A:14-2.7 to compel consent to evaluate.

(d) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(e) After parental consent for initial evaluation of a preschool age or school age student has been received, the evaluation, determination of eligibility for services under this chapter, and, if eligible, development and implementation of the IEP for the student shall be completed within 90 calendar days.

1. If the parent repeatedly fails or refuses to produce the child for the evaluation, the time period above shall not apply.

2. If a child enrolls in the school of a district board of education after an initial evaluation was undertaken by another district board of education, but before it was completed, and the new district is making progress so as to ensure a prompt completion of the evaluation, and the district and parent agree to a specific modified timeframe for completing the evaluation, the agreed-upon timeframe for completing the evaluation shall be applied.

3. If initial evaluation of a preschool age child is warranted, the district board of education shall take steps to ensure that consent to evaluate is obtained without delay.

(f) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. Such evaluation shall include at least two assessments and shall be conducted by at least two members of the child study team in those areas in which they have appropriate training or are qualified through their professional licensure or educational certification and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. Be conducted in the language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to do so;

2. Apply standards of validity, reliability and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment;

3. 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 score with standard deviation or norm referenced scores with a cutoff score;

4. Include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child with limited English proficiency, assessment of the student's communication needs, and assessment of the need for assistive technology devices and services. Each of the following components shall be completed by at least one evaluator:

i. A minimum of one structured observation by one evaluator in other than a testing session;

(1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the general education classroom;

(2) In the case of a student of preschool age, a child study team member in an environment appropriate for a child of that age;

ii. An interview with the student's parent;

iii. An interview with the teacher(s) referring the potentially disabled student;

iv. A review of the student'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 student; and

vi. One or more informal measure(s) which may include, but not be limited to, surveys and inventories; analysis of work; trial teaching; self-report; criterion referenced tests; curriculum based assessment; and informal rating scales; and

5. Beginning at age 14, or younger if appropriate, include assessment(s) to determine appropriate postsecondary outcomes.

(g) When the suspected disability is a disorder of articulation, voice or fluency according to N.J.A.C. 6A:14-3.6(b), the speech-language specialist shall:

1. Meet with the parent and the student's general education teacher who is knowledgeable about the student's educational performance or, if there is no general education teacher, a general education teacher who is knowledgeable about the district's programs to review existing data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;

2. Obtain consent to conduct the evaluation according to N.J.A.C. 6A:14-3.3(e)5;



3. Conduct an assessment according to (f)1 through 4 above. The assessment shall include written information from the classroom teacher of the educational impact created by the speech problem. Such assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (d) above; and

4. Prepare a written report of the results according to (h) below.

(h) A written report of the results of each assessment shall be prepared. At the discretion of the district, the written report may be prepared collaboratively by the evaluators or each evaluator may prepare an individually written report of the results of his or her assessments. Each written report shall be dated and signed by the individual(s) who conducted the assessment and shall include:

1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;

2. A statement regarding relevant behavior of the student, either reported or observed and the relationship of that behavior to the student's academic functioning;

3. If an assessment is not conducted under standard conditions, the extent to which it varied from standard conditions;

4. When a student is suspected of having a specific learning disability, the documentation of the determination of eligibility shall include a statement of:

i. Whether the student has a specific learning disability;

ii. The basis for making the determination;

iii. The relevant behavior noted during the observation;

iv. The relationship of that behavior to the student's academic performance;

v. Educationally relevant medical findings, if any;

vi. If a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;

vii. The determination concerning the effects of environmental, cultural or economic disadvantage;

viii. Whether the student achieves commensurate with his or her age;

ix. If a response to scientifically based interventions methodology is utilized, the instructional strategies utilized and the student-centered data collected with respect to the student; and

x. Whether there are strengths or weaknesses, or both, in performance or achievement relative to intellectual development in one of the following areas that require special education and related services;

(1) Oral expression;

(2) Listening comprehension;

(3) Written expression;

(4) Basic reading skill;

(5) Reading fluency skills;

(6) Reading comprehension;

(7) Mathematics calculation; and

(8) Mathematics problem solving;

5. Additionally, each team member shall certify in writing whether his or her report is in accordance with the conclusion of eligibility of the student. If his or her report does not reflect the conclusion of eligibility, the team member must submit a separate statement presenting his or her conclusions; and

6. When a response to scientifically based interventions methodology is utilized to make the determination of whether the student has a specific learning disability, the district board of education shall:

i. Ensure that such methodology includes scientifically based instruction by highly qualified instructors, and that multiple assessments of student progress are included in the evaluation of the student;

ii. Not be required to include more than the assessment conducted pursuant to the district's response to scientifically based intervention methodology in the evaluation of a student; and

iii. If the parent consents in writing, extend, as necessary, the time to complete an evaluation pursuant to (c) above.

(i) When conducting an initial evaluation or reevaluation, the reports and assessments of child study team members or related services providers from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions or professionals in private practice may be submitted by the parents to the child study team for consideration. Each report and assessment shall be reviewed and considered by the child study team member or related services provider with relevant knowledge or expertise. A report or component thereof may be utilized as a required assessment, if the assessment has been conducted within one year of the evaluation and the child study team determines the report and assessment meet the requirements of (h) above.

(j) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall transmit the summary to the child study team for the meeting according to (a) above to consider the need for a health appraisal or specialized medical evaluation.

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

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

Added (i).

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

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

Rewrote the section.

Amended by R.2001 d.397, effective November 5, 2001.

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

In (d), added 3; in (f), added 5.

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

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

In (e), Amended the 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).

Rewrote the section.

#### Case Notes

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

State special education regulations which did not track regulations under the Individuals with Disabilities Education Act (IDEA), requiring dissenting members of a child's individualized education program (IEP) team to file separate written reports, frustrated federal policy of providing disabled children with free appropriate public education (FAPE) and protecting their rights and those of their parents, where parents who disagreed with an IEP team's evaluation had no other way of discovering existence of disagreement among team members. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

As the state's regulations are in accord with the federal regulations in allowing merely informal meetings rather than formal conventions of an

IEP team, reviewing an evaluation or report without changing an IEP in an informal meeting is not a procedural violation of IDEA, and it was not necessary to convene an IEP meeting to review a speech therapist evaluation. The lack of a procedural violation was bolstered by the fact that the student's parents were present at an informal meeting when the speech therapist's evaluations were discussed, although the student's father later denounced his knowledge of this event. *Z.R. v. Fort Lee Bd. of Educ.*, OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Board of education failed to establish that it was providing a seven-year-old first-grader suffering from attention deficit disorder and disruptive behavior disorder with a free and appropriate education designed to address his behavioral issues which, in turn, prevented him from securing any benefit from his program as presently designed. There was no educational benefit to the child because the board had all but capitulated that the child's present program was not appropriate to meet his needs in the absence of a behavior intervention plan—in other words, through the repetitive suspensions from school, and in the absence of behavioral interventions intended to replace inappropriate behavior with appropriate behavior, there was no benefit to be derived by the child remaining in an in-district program. Without a functional behavioral assessment of the child being done, there was no adequate basis for determining his program, since his behavior impeded his learning. *D.S. ex rel. S.S. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 3836-08, 2008 N.J. AGEN LEXIS 895, Final Decision (May 20, 2008).

There was no basis to require a school district to provide an independent evaluation of a student at the district's own expense, after the district had already evaluated the student and determined that the student did not qualify for special education services; parents' contentions concerning a perceived discrepancy between the W-J III language arts scores and the NJASK score of "partially proficient" in language arts did not compel a different result. *Glen Ridge Bd. of Educ. v. J.D. and K.D. ex rel. C.D.*, OAL DKT. NO. EDS 03056-08, 2008 N.J. AGEN LEXIS 230, Final Decision (April 2, 2008).

Emergency relief granted to school district to allow it to commence and conduct the necessary assessments of child classified as disabled (classification category of "specific learning disability") in order to perform psychological, educational, and social evaluations; school district's request to enjoin or otherwise prevent the parents from engaging in private evaluations at their own expense was denied. *Matawan-Aberdeen Reg'l Bd. of Educ. v. H.G. ex rel. S.G.*, OAL Dkt. No. EDS 8330-05, 2005 N.J. AGEN LEXIS 658, Final Decision (November 2, 2005).

State special education regulation requiring that copies of evaluation tests and documentation of eligibility be given to parents at eligibility conference violated provision of Individuals with Disabilities Education Act (IDEA) requiring that such tests and documentation be provided to parents upon their completion, especially in the absence of any state requirement that materials be made available in parents' native language; IDEA and federal regulations required that tests and documentation be provided to parents in advance of eligibility meeting to permit parents' meaningful participation. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Educational assessments of 12-year-old twins, together with the psychological assessments, when combined with the progress reports of the assigned special education teacher, established the validity of the twins being eligible for special education and related services in the category of "specific learning disability." The educational evaluation of one twin revealed significant struggling with academics and that she was below grade level and, on average, functioned two to three years below age and grade expectations; the educational evaluation of the other twin showed that she had below-average intellectual ability, her oral language skill was significantly below average compared on the basis of age, and while she was average in basic reading and math skills, she was below average in some other areas of reading and math. *M.B. ex rel. S.B. v. Alpine Bd. of Educ.*, OAL Dkt. No. EDS 3331-08 and EDS 3333-08 (Consolidated), 2008 N.J. AGEN LEXIS 747, Final Decision (July 25, 2008).

Eighth grader with a specific learning disability was not entitled to special education services because she was well adjusted and overall performing at grade level and thus not "in need" of services within the meaning of the IDEA. *J.S. and M.S. ex rel. R.S. v. Bound Brook Borough Bd. of Educ.*, OAL Dkt. No. EDS 2021-08, 2008 N.J. AGEN LEXIS 347, Final Decision (May 15, 2008).

Parents satisfied burden of proof of establishing that student, who had an inability to attend school due to his fears of bullying, was in need of special education and related services, and the IEP team was ordered to formulate instruction specially designed to address his disability. *H.S. and N.S. ex rel. A.S. v. Moorestown Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10210-07, 2008 N.J. AGEN LEXIS 232, Final Decision (March 20, 2008).

Emergency relief was denied parents of ninth grade student (with above average intelligence) seeking his education at home until a hearing could be held to determine whether he should be classified and whether an Individualized Education Program (IEP) should be provided for him. Although student's doctors testified that he suffered from medical problems, including psychiatric depression and/or depressive disorder, parents had not shown that, when the case was fully heard, they would probably succeed in their claim that student should be classified for Special Education and related services and that he should be educated at home; similarly, the board of education had not shown that it would probably succeed on its claims. *H.S. ex rel. A.S. v. Moorestown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 8402-07, 2007 N.J. AGEN LEXIS 681, Emergent Relief Decision (October 17, 2007).

Child's ocular albinism did not appear to be interfering with her academic success when she was in kindergarten so that she did not present a need for special education; to be eligible for special education, a child must suffer from a specific disability and that disability must adversely affect the student's educational performance. Once the child's parents voluntarily removed her and placed her in an out-of-district private facility, the board's responsibility to seek out those children in its district who may be in need of special education because of some physical or mental impairment ended. *T.K. and A.K. ex rel. B.K. v. River Vale Bd.*

*of Educ.*, OAL DKT. NO. EDS 1335-06, 2007 N.J. AGEN LEXIS 380, Final Decision (June 19, 2007).

Parents were not entitled to tuition reimbursement for the placement of their nine-year-old daughter with a medical condition that impacted her vision in an out-of-district private facility because they enrolled her in the alternate school without first giving the local school district the opportunity to evaluate her for purposes of special education. *T.K. and A.K. ex rel. B.K. v. River Vale Bd. of Educ.*, OAL DKT. NO. EDS 1335-06, 2007 N.J. AGEN LEXIS 380, Final Decision (June 19, 2007).

Student was appropriately declassified and parents' application for tuition reimbursement for unilateral placement and for compensatory education for speech services was denied where burden was on parents to show that student could not achieve meaningful educational progress at the kindergarten in the district and that the private school with an aide was appropriate, but parties presented opposing appraisals of student's abilities. Although reports in evidence suggested student suffered from autism, the authors of the reports were not presented and the doctor who did testify could not identify specific behaviors that would qualify as severe or pervasive as required by N.J.A.C. 6A:14-3.5. *W.H. ex rel. A.H. v. Bloomsbury Bd. of Educ.*, OAL Dkt. No. EDS 8666-05 and EDS 8667-05, 2006 N.J. AGEN LEXIS 488, Final Decision (August 2, 2006).

That preschool child with autism spectrum disorder had not "previously received special education and related services from the district of residence" within the meaning of N.J.A.C. 6A:14-2.10(b) did not bar parents from seeking reimbursement for the costs of private placement; the New Jersey regulation cannot serve as a basis for providing any less relief than is available under *Burlington*, 471 U.S. 359 (1985), and a contrary interpretation would place parents of preschool children in the untenable position of acquiescing to an inappropriate placement in order to preserve their right to reimbursement. *W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ.*, OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

District met its burden of proving, by a preponderance of the evidence, that declassification of high-school student, classified as "other health impaired," was appropriate, where there was expert testimony from both sides that the student's performance was consistently well within the average range; ALJ found that the student's ADHD did not adversely affect her educational performance and that she did not suffer from a specific learning disability. *D.F. and S.H. ex rel. R.F. v. Livingston Twp. Bd. of Educ.*, OAL DKT. NO. EDS 11549-04, 2005 N.J. AGEN LEXIS 433, Final Decision (August 22, 2005).

Sufficient data supporting classification justifies school board's request to classify student as emotionally disturbed. *Clifton Board of Education v. J.T.*, 97 N.J.A.R.2d (EDS) 121.

School board required to continue student's placement consistent with IEP. *C.R. v. Atlantic City Board of Education*, 96 N.J.A.R.2d (EDS) 384.

Six-year old who assaulted teacher and other students properly classified as emotionally disturbed. *Jersey City Board of Education v. T.H.*, 96 N.J.A.R.2d (EDE) 358.

Special education high school student would not be reclassified from neurologically impaired to autistic. *R.S. v. Ridgewood Board of Education*, 96 N.J.A.R.2d (EDS) 299.

Failure of mentally retarded student to progress supported nonconsensual classification as full-time special education student and placement in moderate cognitive program. *Elizabeth Board of Education v. L.H.*, 96 N.J.A.R.2d (EDS) 297.

Classification of student as perceptually impaired was ordered over parental objection where three child study teams agreed on student's status as disabled. *Marlboro Township Board of Education v. R.F.*, 96 N.J.A.R.2d (EDS) 184.

Emotionally disturbed student was entitled to special education classification and home study. *R.S. v. East Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 177.

Reimbursement of evaluation and counseling costs for nonclassified student were denied since nonclassified students are not covered under Individuals with Disabilities Education Act. *M.C. v. Franklin Board of Education*, 96 N.J.A.R.2d (EDS) 175.

Student previously classified as neurologically impaired would be reclassified as educable mentally retarded after her consistently low test scores were found not to be solely due to her hyperactivity and distractibility during test taking. *A.E. v. Jersey City Board of Education*, 96 N.J.A.R.2d (EDS) 89.

Student not eligible for special education services when no disability found to justify such services. *F.C. v. Palmyra Board of Education*, 96 N.J.A.R.2d (EDS) 39.

Multi-handicapped student was placed in private academy where placement in public high school would likely result in failure. *C.D. v. West Windsor-Plainsboro Board of Education*, 96 N.J.A.R.2d (EDS) 22.

Residential placement for handicapped child denied when current day placement provided fair and appropriate education and residential placement not made for education reasons. *B.L. v. Board of Education of the Borough of Berlin*, 96 N.J.A.R.2d (EDS) 12.

Poor academic performance and behavior necessitated child's classification, program and placement even though parent was inaccessible and unresponsive. *M.F. v. Piscataway Board*, 95 N.J.A.R.2d (EDS) 206.

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

### 6A:14-3.6 Determination of eligibility for speech-language services

(a) "Eligible for speech-language services" means a speech and/or language disorder as follows:

1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences or the influence of a foreign language, which adversely affects a student's educational performance; and/or

2. A language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c) 4 and the student requires speech-language services only.

(b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(g). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.

2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.

3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

(c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(k)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(k)2. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results and the service provider at the IEP meeting. The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve as the agency representative at the IEP meeting.

(e) When a student has been determined eligible for speech-language services and other disabilities are suspected or other services are being considered, the student shall be referred to the child study team.

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

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

In (c), deleted a reference to adult students; and in (d), substituted "may" for "shall not" in the last sentence.

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

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

In the introductory paragraph of (b), substituted "(g)" for "(e)"; in (c), substituted "(k)1" for "(i)1", and added "not less than 10 calendar days prior to the meeting" at the end; in (d), substituted "(k)2" for "(i)2" and inserted "The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10."

#### Case Notes

Parents failed to provide evidence to show that their 10-year-old son was eligible for language therapy by virtue of a speech or language disorder as those terms were contemplated by N.J.A.C. 6A:14-3.6. J.K. ex rel. J.K. v. Berkeley Heights Bd. of Educ., OAL Dkt. No. EDS 3039-06, 2006 N.J. AGEN LEXIS 805, Final Decision (September 26, 2006).

Student was appropriately declassified and parents' application for tuition reimbursement for unilateral placement and for compensatory education for speech services was denied where burden was on parents to show that student could not achieve meaningful educational progress at the kindergarten in the district and that the private school with an aide was appropriate, but parties presented opposing appraisals of student's abilities. Although reports in evidence suggested student suffered from

autism, the authors of the reports were not presented and the doctor who did testify could not identify specific behaviors that would qualify as severe or pervasive as required by N.J.A.C. 6A:14-3.5. W.H. ex rel. A.H. v. Bloomsbury Bd. of Educ., OAL Dkt. No. EDS 8666-05 and EDS 8667-05, 2006 N.J. AGEN LEXIS 488, Final Decision (August 2, 2006).

School board required to provide extended-year services to seven year old with speech disorder. J.M. v. Alloway Township Board of Education, 97 N.J.A.R.2d (EDS) 39.

#### 6A:14-3.7 Individualized education program

(a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.

1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;

2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;

3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and

4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(k)2 for students classified eligible for special education and related services or according to

needs, taking into account the student's strengths, preferences and interests. In addition to the above, transition services shall include:

- (1) Instruction;
- (2) Related services;
- (3) Community experiences;
- (4) The development of employment and other post-school adult living objectives; and
- (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;

13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;

14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;

15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;

16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and

17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with non-disabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.

(f) The IEP for the student classified as eligible for speech-language services shall include (e)1 through 7, 15 and 16 above. When appropriate, (e)11, 12, 13, and 14 above shall be included. The statement of the current academic and functional achievement in (e)1 above shall include a description of the student's status in speech-language performance and a description of how the student's disability affects the student's involvement and progress in the general curriculum. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.

(g) If an agency other than the district board of education fails to provide the transition services included in the student's individualized education program, the district board

of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.

(h) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.

1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.

2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.

(j) The IEP team shall review:

1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;

3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;

4. The student's anticipated needs; or

5. Other relevant matters.

(k) For those students in a separate setting, the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement.

(l) Signatures of those persons who participated in the meeting to develop the IEP shall be maintained and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.

(m) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3.

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

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

In (d)3, rewrote the introductory paragraph.

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

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

Rewrote the section.



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

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

In (d)5i, inserted "general" following "particular" and 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).

Rewrote the section.

### Law Review and Journal Commentaries

Inclusion for the Developmentally Disabled Child. Michael I. Inzelbuch, 222 N.J.L.J. 22 (2003).

### Case Notes

Participation by representatives of both school districts in which disabled child of divorced parents with joint custody resided, in developing and reviewing individualized educational plan (IEP), would not be inconsistent with Individuals With Disabilities Education Act (IDEA) nor New Jersey Administrative Code provision for IEP team to develop and periodically review child's IEP, where (IDEA) required team that developed and reviewed IEP to be "individualized" and to include child's parents, at least one of the child's teachers, and a representative of the local school district, and allowed participation of other individuals who had knowledge or special expertise regarding child. *Sommerville Bd. of Educ. v. Manville*, 167 N.J. 55 (2001).

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 (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.

"Progress key" method of setting out educational objectives and student's progress toward those objectives, as employed in Individual Education Program (IEP) prepared by school district for severely disabled student, did not satisfy procedural requirements of Individuals with Disabilities Education Act (IDEA) and New Jersey law with respect to provision of statement of annual goals with specific measurable objectives, and of evaluation criteria related to those goals and objectives, despite fact that "progress key" method had been approved by state Department of Education. *D.B. v. Ocean Tp. Bd. of Educ.*, 985 F.Supp. 457 (D.N.J. 1997).

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 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 placement of 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.

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.

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

State special education regulations governing consultation for transition services with the state Division of Vocational Rehabilitation Services (DVRS) and unspecified "other agencies" were sufficiently broad to encompass consultation with state Division of Developmental Disabilities (DDD) and Department of Human Services, Commission for the Blind and Visually Impaired (CBVI), as Individuals with Disabilities Education Act (IDEA) did not require specific reference to agencies serving the blind or those so severely developmentally disabled as to be unemployable. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Regulation governing education of handicapped students impermissibly narrowed scope of Individuals with Disabilities Education Act (IDEA) with respect to provision of assistive technology and services; regulation failed to expressly or impliedly incorporate federal requirements and did not adequately define crucial terms. Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6, and 4.3, 305 N.J.Super. 389, 702 A.2d 838 (A.D. 1997).

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).

School district was ordered to revise its IEP for a 10-year old child who was severely autistic to incorporate a behavioral intervention plan developed by out-of-state institute which advocated use of a "harness," to be only used outdoors to prevent child from running away, and "face screening" which by use of person's hands to block out child's ability to see, had the effect of sensual deprivation for a short period of time in order to calm child down. The legal right underlying the child's parent's claim was well settled for where a student's behavior impedes his learning or that of others, child study teams must consider appropriate strategies, including positive behavioral interventions and supports, and applied behavior analysis, the instructional approach followed at the institute, was a reputable methodology recognized by New Jersey

educators as an acceptable instructional program for teaching severely autistic children. S.M. ex rel. B.M. v. Passaic City Bd. of Educ., OAL Dkt. No. EDS 9950-08, 2008 N.J. AGEN LEXIS 802, Emergent Relief Decision (September 11, 2008).

Because a high-school student with cerebral palsy had comprehension difficulties and reading and writing delays, goals were required for all areas of her mainstream curriculum because her disability affected her ability to perform in all educational areas, and it was a procedural violation of IDEA for the district to fail to provide goals and objectives for her general education curriculum. While accounts differed on just how severe her disability was and what effect it had on her cognitive functioning, it was clear that her disability did affect her progress in the general education curriculum as seen in her motor abilities, note-taking abilities, need for adaptive technology, and general processing delays. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Goals and objectives must be formulated for speech and language services that are related to general education performance, and it was a procedural violation of IDEA for a speech therapist to fail to provide numerical measurements of goals-and-objectives progress of a high-school student with cerebral palsy. While a speech reevaluation was detailed and discussed various speech-related matters that the speech therapist intended to work on with the student, there were no clear benchmarks that were outlined in the reevaluation and, additionally, speech updates did not meet the level of detailed measurable goals that were required. While strictly numerical evaluations of goals and objectives are not required, the therapist's subjective evaluations, made through observation and without the use of any standardized tests, met neither the federal nor the state requirements for IEP goals and objectives. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

It was necessary to convene an IEP meeting when occupational therapy services provided a high-school student with cerebral palsy were discontinued, and the decision to discontinue such services, made without consulting with the student's parents, amounted to a change of educational placement subject to the IDEA procedural requirements. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

While the goals for transition planning for a high-school student with cerebral palsy may have been somewhat vague and necessary agencies may not have attended transition meetings as required, nonetheless the school district did not violate the IDEA in implementing the student's transition plans because it offered substantial information and assistance tailored to the student's unique needs and personal goals. Since the IEP process is intended to be a collaborative process, the parents are required to make a good-faith effort to remedy what they believe is an inappropriate IEP, and by failing to follow up with transition plans and the recommended agencies, the student and her parents did not meet their responsibilities, for which the district could not be blamed. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

As a service provider for a high-school student with cerebral palsy, the student's one-on-one aide should have had access to the student's IEP and should have been informed of her duties under the IEP. However, there was nothing in the record that indicated that the aide ever requested to see the IEP and was denied, and, additionally, while the aide may not have received written instructions of her responsibilities under the IEP, she had attended IEP meetings and was given oral instructions about her duties. The district's failure to complete the required documentation indicating that the aide had been so informed was a minor procedural violation which in no way denied the student meaningful educational benefit. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

While the N.J.A.C. is unambiguous in requiring regular education teachers have access to a student's IEP, there was nothing in the record indicating that any of the regular education teachers of a high-school student with cerebral palsy asked to see her IEP and were denied, nor

was there anything in the record indicating that her regular education teachers did not know what their responsibilities were in implementing her IEP. Accommodations made for the student in both her regular and special education classes as called for in her IEP, indicated that her teachers had at least some knowledge of the details in her IEPs, and the failure of the school district to document the information given to the regular education teachers was a minor procedural violation, not amounting to a substantive deprivation of rights. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Claim of a high-school student with cerebral palsy and her parent that an expert on cerebral palsy was necessary in formulating the student's IEP was unsound, because the student's unique and individual needs, not the nature of the student's disability, should dictate her educational program. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Current IEP for an 11-year-old female whose primary diagnosis was inverted duplication 15, a genetic disorder of the chromosomes, with symptoms including poor muscle tone, developmental delays, mental retardation, learning disabilities, seizure disorder, and autism features, was to be rewritten, and any future IEPs for her were to be written so as to comply fully with the requirements of N.J.A.C. 6A:14-3.7(e). The current IEP was deficient in that (a) the IEP goals and objectives lacked measurable terms and, thus, were subjective; (b) the goals and objectives were not detailed and measurable, and generally appeared to be functional goals; (c) since the goals and objectives were not measurable, neither the parents nor education personnel providing special education and related services could be apprised of the expected level of achievement for each goal; (d) the annual goals did not include benchmarks or short-term objectives related to meeting the child's needs that resulted from her disability so as to enable her to be involved in and progress in the general education curriculum; (e) the annual goals were not measurable with included benchmarks so as to meet the child's other educational needs resulting from her disability; and (f) a serious concern about the goals and objectives was that the child was working on many of the same skills dating back to 2003 without achieving mastery. F.G. ex rel. A.G. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 2063-08, 2008 N.J. AGEN LEXIS 822, Final Decision (August 19, 2008).

District was ordered to provide an appropriate IEP, program, and placement to an 11-year-old student and compensatory education was granted where the student's IEPs failed to comply with the requirements of the IDEA and its implementing regulations. ALJ accepted the opinion of parents' witness that the student had the ability to be a basic skills literal reader. The child remained a nonreader, was unable to spell or write his name, and had not made any measurable academic progress in the basic skills area in the four years he had been a student in the school district. M.L. ex rel. M.L. v. Manalapan-Englishtown Reg'l Bd. of Educ., OAL Dkt. No. EDS 4388-06, 2007 N.J. AGEN LEXIS 740, Final Decision (November 29, 2007).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL Dkt. No. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 794), a school district was required to provide disabled students with equal and meaningful access to an after-school program that operated as a not-for-profit enterprise fund because the program was not independent of the district. K.G. and J.G. ex rel. O.G. v. Morris Bd. of Educ., OAL Dkt. No. EDS 11872-06, 2007 N.J. AGEN LEXIS 480, Final Decision (August 10, 2007).

IEP and the program provided to a student were defective because they failed to provide accommodations for anticipated chronic absences that totaled 65 days during the student's senior year. J.T. ex rel. T.T. v.

West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 4728-06, 2007 N.J. AGEN LEXIS 228, Final Decision (April 30, 2007).

High school student's IEPs were defective because they did not attempt to offer grade-level work with accommodations and because they provided no objective criteria to evaluate progress toward IEP goals. J.T. ex rel. T.T. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 4728-06, 2007 N.J. AGEN LEXIS 228, Final Decision (April 30, 2007).

Two IEPs of a high school student were found to be virtually devoid of any provisions complying with the requirements related to providing the student with transition services, neither IEP complied with the requirement to name the person or persons responsible to serve as a liaison, one failed to ensure that the student's preferences and interests were considered because she was absent from the IEP meeting, and both IEPs failed to focus on progressing the student toward self-sufficiency and independent living and her desired goal of post-secondary education or employment. J.T. ex rel. T.T. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 4728-06, 2007 N.J. AGEN LEXIS 228, Final Decision (April 30, 2007).

Disabled high school student was denied a FAPE and awarded compensatory education where there was no evidence to support the position of a school district that she would be able to miss 68 days of school, remain academically successful, and graduate. J.T. ex rel. T.T. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 4728-06, 2007 N.J. AGEN LEXIS 228, Final Decision (April 30, 2007).

Reimbursement for unilateral placement out-of-district at the Lakeview School was denied where the ALJ found that the in-district IEP team reasonably determined that the student could not be satisfactorily educated in sixth grade middle school mainstream classes due to the difficulty and pace of those classes. K.M. and E.M. ex rel. Z.M. v. Flemington-Raritan Reg'l Bd. of Educ., OAL DKT. NO. EDS 10048-05 and EDS 56-06, 2006 N.J. AGEN LEXIS 1002, Final Decision (December 5, 2006).

Parent did not meet her burden to establish that the educational programs and placement determination by the district was inappropriate where her 13-year-old African-American son was classified as multiply disabled, including classifications of Oppositional Defiance Disorder, Emotionally Disturbed and Specific Learning Disability. Although parent sought to have her son's classification changed (she contended that he was not disabled) and to have him placed within the regular education programs in the district, she failed to meet her burden where district presented evidence of student's diagnosis with several disabilities and of disruptive behavior at previous schools; to the extent that these disabilities disrupted the student's learning progress, they had to be dealt with before he could be returned to the mainstream setting. L.H. ex rel. H.M. v. Hamilton Twp Bd. of Educ., OAL Dkt. No. EDS 8628-06, 2006 N.J. AGEN LEXIS 1040, Final Decision (December 15, 2006).

In the Third Circuit, the educational benefit conferred upon a child must be more than "de minimis" or trivial; it requires a satisfactory IEP to provide significant learning and a meaningful benefit. The benefit must be meaningful in light of the student's potential. To fulfill this mandate, the student's capabilities as to both "type and amount of learning" must be analyzed. When analyzing whether an IEP confers a meaningful benefit, adequate consideration must be given to the intellectual potential of the individual student to determine if that child is receiving a free and appropriate public education. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGEN LEXIS 973, Final Decision (November 1, 2006).

There is no bright-line rule to determine the amount of benefit required of an appropriate IEP; a student-by-student analysis that carefully considers the student's individual abilities is required. There must be a degree, intensity, and quality of special education and related services adequate to provide an educational benefit to the individual child. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGEN LEXIS 973, Final Decision (November 1, 2006).

Parent failed to meet burden of proving that the IEP for fifth-grade student with Pervasive Developmental Disorder would not provide student with a free and appropriate public education where parent did not offer any expert testimony, nor any reports that supported her position, and the letter from one doctor did not carry any weight since doctor had not evaluated student in two years, and there was no evidence that doctor had seen or evaluated the student's current program. The District's witnesses were highly credible and established that the IEP for student was appropriate and tailored to provide him with a meaningful educational benefit, the District relied upon the independent evaluations conducted a few months prior in formulating student's current program and placement, and the District also took input from student's teachers in formulating the IEP. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGEN LEXIS 973, Final Decision (November 1, 2006).

Parent of a child with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder, and Post Traumatic Stress Disorder failed to present sufficient evidence that the child's IEP was insufficient where the parent did not call any experts nor did any teacher or administrator testify that the IEP was imprecise. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2470-06, 2006 N.J. AGEN LEXIS 832, Final Decision (September 29, 2006).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

District's use of an interim IEP, which provided for an inadequate 10 hours of home instruction per week for a preschool autistic child "in the interim" of the district securing an out-of-district placement in a preschool disabled self-contained classroom, and which lacked adequate details about the program sought, was unfair to parents and did not appear to be supported by the regulations. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Compensatory education was granted for the district's failure to implement the provisions of a controlling IEP for a child on the severe end of the Autism spectrum. Although the district had planned for and agreed to provide an in-district program immediately on the child's discharge from the Kennedy Krieger Institute, it abruptly changed course only three days before the child's discharge. District was ordered to provide in-district services, rather than out-of-district or residential placement, in accordance with the June 5, 2003 IEP. W.G. ex rel. A.G. v. Brick Twp. Bd. of Educ., OAL Dkt. No. EDS 4374-03, 2006 N.J. AGEN LEXIS 73, Final Decision (February 8, 2006).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P., OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

Proposed IEP for 16-year-old high school student was not reasonably calculated to provide him with a meaningful educational benefit because it failed to give sufficient consideration to his disabilities in the context of his underlying issues of anxiety and fragile self-esteem. S.C. ex rel. D.C. v. Montgomery Twp. Bd. of Educ., OAL DKT. NO. EDS 10147-04, 2005 N.J. AGEN LEXIS 933, Final Decision (December 22, 2005).

aff'd, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 26, 2007) (unpublished opinion).

Parent's due process petition seeking changes to child's IEP was dismissed as moot and parties were ordered to participate in a scheduled IEP meeting because the relief that parent sought could only be obtained through attendance and participation at an IEP meeting, and that meeting was in the process of being scheduled by the school district as required by N.J.A.C. 6A:14-3.7(h) and N.J.A.C. 6A:14-7.1. S.S. ex rel. K.S. v. Lawnside Borough Bd. of Educ., OAL Dkt. No. EDS 8681-05, 2005 N.J. AGEN LEXIS 930, Final Decision (December 1, 2005).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during the 2003 extended school year because although student's case manager could not attribute the progress student made to either the school program or the home-based program or both, it was clear, from the case manager's testimony that progress was made during the 2002-03 school year and the 2003 extended school year and it was equally clear that the student had the benefit of both school-based ABA instruction and the home-based program. Both programs were successful in providing a meaningful educational benefit and it was impossible to allocate the proportion of benefit derived from each of the programs. J.F. ex rel. G.F. v. West Orange Bd. of Educ., OAL Dkt. No. EDS 9099-04, 2005 N.J. AGEN LEXIS 659, Final Decision (October 31, 2005).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during 2003-04 where ABA program was an integral and important part of the student's progress made during the school year and

where the school district relied on previous year's IEP to which the parents had not consented. J.F. ex rel. G.F. v. West Orange Bd. of Educ., OAL Dkt. No. EDS 9099-04, 2005 N.J. AGEN LEXIS 659, Final Decision (October 31, 2005).

Once a parent raises the issue of the appropriateness of the IEP and the educational placement, the school district bears the burden of proving that it is providing an appropriate education to the child. In evaluating the appropriateness of a school district's program, the "some educational benefit" standard articulated in *Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S. Ct. 1602, 73 L. Ed. 2d 690 (1982) has evolved into a "meaningful educational benefit" standard; "meaningful" has not been further defined, although it has been held that it requires more than a "trivial educational benefit." School district is not required to provide the best education available. D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ., OAL Dkt. No. EDS 8203-04, 2005 N.J. AGEN LEXIS 617, Final Decision (October 18, 2005).

Law did not support parents' insistence on a "certified" Wilson and/or Orton-Gillingham instructor for a dyslexic student where school district presented evidence that it had competent instruction in the Wilson technique, and evidence was insufficient to show that student's slow progress in reading was attributable to the credentials (or an alleged lack thereof) of the school district's teaching staff. D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ., OAL Dkt. No. EDS 8203-04, 2005 N.J. AGEN LEXIS 617, Final Decision (October 18, 2005).

Dyslexic student's IEP was reasonably designed to confer meaningful educational benefit where the goals and objectives of the IEP were

adequate to remediate student's encoding and decoding weaknesses to transition to the next grade level and IEP contained the necessary individualization, specificity, and measurability required by law. *D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 8203-04, 2005 N.J. AGEN LEXIS 617, Final Decision (October 18, 2005).

Parent's lack of consent no bar to implementing properly produced education plan for special education student. *Riverton Board of Education v. A.L.*, 97 N.J.A.R.2d (EDS) 130.

Delay seeking relief from poor grades defeats emergency petition. *J.T. v. Holmdel Board of Education*, 97 N.J.A.R.2d (EDS) 129.

Student granted compensatory education after inappropriate special education placement. *T.B. v. Camden Vocational Technical High School and Lower Camden County Regional High School District Number 1*, 97 N.J.A.R.2d (EDS) 104.

School board required transportation only from child's home. *I.D. and M.D. v. Board of Education of the Township of Hazlet*, 97 N.J.A.R.2d (EDS) 33.

Modification of special education program for student with articulation disability did not violate her federal rights. *Norwood Board of Education v. C.C.*, 96 N.J.A.R.2d (EDS) 108.

Individualized education program sufficient if in compliance with statutory order. *C.L. v. State-Operated School District of Jersey City*, 96 N.J.A.R.2d (EDS) 83.

Request for extended day supplemental instruction and extended school year denied when classified student's individualized education program (IEP) found sufficient without such services. *S.R. v. Manasquan Board of Education*, 96 N.J.A.R.2d (EDS) 32.

Child with increasing difficulties in reading and spelling required perceptually impaired classification to provide him with necessary support in a special education program. *Spring Lake Board v. P.M.*, 95 N.J.A.R.2d (EDS) 267.

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.

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.

Perceptually impaired child was entitled to an extended school year in form of five hours per week of summer tutorial assistance with reasonable and necessary travel expenses. *C.G. v. Old Bridge Board*, 95 N.J.A.R.2d (EDS) 221.

Agreement with parent and individualized educational program both established responsibility of school board for orthopedically handicapped child's occupational and physically therapy during summer months. *West Milford v. C.F.*, 95 N.J.A.R.2d (EDS) 204.

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.

Classified student entitled to transfer from special education class to comparable mainstream class. *P.D. v. Hasbrouck Heights Board of Education*, 95 N.J.A.R.2d (EDS) 5.

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.

### 6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district both agree that a reevaluation prior to the expiration of one year as set forth above is warranted. When a reevaluation is conducted sooner than three years from the previous evaluation as set forth above, the reevaluation shall be completed in accordance with the timeframes in (e) below.

1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.

(b) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data on the student, including:

- i. Evaluations and information provided by the parents;
- ii. Current classroom based assessments and observations; and
- iii. Observations by teachers and related services providers; and

2. On the basis of that review, and input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine:

- i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);
- ii. The present levels of academic achievement and functional performance and educational and related developmental needs of the student;
- iii. Whether the student needs special education and related services, and the academic, developmental, functional and behavioral needs of the student and how they should appropriately be addressed in the students IEP; and



iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

3. If the IEP team determines that no additional data are needed to determine whether the student continues to be a student with a disability, the district board of education:

i. Shall provide notice according to N.J.A.C. 6A:14-2.3 to the student's parents of that determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and

ii. Shall not be required to conduct such an assessment unless requested by the student's parents;

4. If additional data are needed, the IEP team shall determine which child study team members and/or specialists shall administer tests and other assessment procedures to make the required determinations in (b)2i through iv above.

(c) Prior to conducting any assessment as part of a reevaluation of a student with a disability, the district board of education shall obtain consent from the parent according to N.J.A.C. 6A:14-2.3.

1. Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(f)1 through 5 or 3.4(g), as appropriate.

(d) A reevaluation shall be conducted when a change in eligibility is being considered, except that a reevaluation shall not be required before the termination of a student's eligibility under this chapter due to graduation or exceeding age 21.

(e) Unless the parent and district board of education agree to waive a reevaluation, all requirements of this section for performing a reevaluation shall, as applicable, be completed within 60 days of the date the parent provides consent for the assessments to be conducted as part of the reevaluation or by the expiration of the three year timeframe from completion of the prior evaluation or reevaluation, whichever occurs sooner.

(f) When a reevaluation is completed:

1. A meeting of the student's IEP team according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(c) shall be conducted to determine whether the student continues to be a student with a disability. A copy of the evaluation report(s) and documentation of the eligibility shall be given to the parent at least 10 days prior to the meeting.

2. If the student remains eligible, an IEP team meeting according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(d) shall be conducted to review and revise the student's IEP.

(g) By June 30 of a student's last year of eligibility for a program for preschoolers with disabilities, a reevaluation shall be conducted and, if the student continues to be a student with a disability, the student shall be classified according to N.J.A.C. 6A:14-3.5(c) or 3.6(a).

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

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

Rewrote (b); amended (c) and (e); in (f)1, deleted "or adult student" following "parent" in the second sentence; added (g).

Amended by R.2001 d.397, effective November 5, 2001.

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

In (d), substituted "through 3" for "and 2".

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

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

Rewrote (a); made a grammatical correction in paragraph (b)2; rewrote (b)2ii and (b)2iii; in (b)3i and introductory paragraph of (c), updated the N.J.A.C. reference; recodified former (d) as new (c)1, updating N.J.A.C. references; recodified former (e) as new (d); added new (e); in (f)1 and (f)2, updated N.J.A.C. references; in (f)1, added "at least 10 days prior to the meeting" at the end.

### Case Notes

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.

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.

Board of education's denial of parent's request for an independent reading evaluation and a functional assessment of a 16-year-old pupil who was classified as other health impaired was proper where board maintained that reading was a component of the educational evaluation, and that a functional assessment reflected various aspects and components of the psychological, educational, speech, and social evaluations, and the parent offered no evidence to the contrary. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Since board of education and parent were in agreement that certain assessments were necessary as part of the reevaluation of a 16-year-old pupil who was classified as other health impaired, and since board of education offered two possible independent evaluators for each evaluation but parent maintained that she should be given a choice of more than two evaluators for each evaluation, but she failed to identify any problem with any of the evaluators offered by the board or suggest any others of her own, the board was granted consent to have the independent evaluations conducted by any of the evaluators listed. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Emergency relief granted to school district to allow it to commence and conduct the necessary assessments of child classified as disabled (classification category of "specific learning disability") in order to perform psychological, educational, and social evaluations; school district's request to enjoin or otherwise prevent the parents from engaging in private evaluations at their own expense was denied. *Matawan-Aberdeen Reg. Bd. of Educ. v. H.G. ex rel. S.G.*, OAL Dkt. No. EDS 8330-05, 2005 N.J. AGEN LEXIS 658, Final Decision (November 2, 2005).

Student ordered to undergo psychiatric evaluation. *Vernon Township v. G.F.*, 97 N.J.A.R.2d (EDS) 56.

Testing results indicating special education student no longer perceptually impaired justifies declassification. *C.W. v. Southern Gloucester County Regional*, 97 N.J.A.R.2d (EDS) 34.

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.

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. *B.C. v. Flemington-Raritan Board*, 95 N.J.A.R.2d (EDS) 255.

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.

### 6A:14-3.9 Related services

(a) Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.

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

3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.

4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.

i. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.

ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.

5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.

6. Recreation shall be provided by certified school personnel.

7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.

8. Nursing services shall be provided as a related service only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the individualized education program of the child.

9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.

10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.

11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.

12. Other related services shall be provided as specified in the student's IEP.

(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.

New Rule, R.2003 d.387, effective October 6, 2003.

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

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

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

In the introductory paragraph of (a), inserted “; school nurse services, recreation, social work services, medical services”; in (a)5, substituted “students with disabilities” for “the disabled”; added new (a)8 through (a)11 and recodified former (a)8 as new (a)12.

#### Case Notes

Although regulations provide for transportation to and from school as required in an IEP, a school district is not required to physically transport an eight-year-old autistic child to speech therapy where reasonable alternatives exist, such as reimbursement or providing the therapy after school. *C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ.*, OAL Dkt. No. EDS 8034-08, 2008 N.J. AGEN LEXIS 876, Final Decision (October 29, 2008).

As a component of the educational and functional performance of a high-school student with cerebral palsy, her assistive technology such as Dragon Naturally Speaking voice-activated software, and her progress in that regard, was subject to the goals-and-objectives requirement, and it was a procedural violation of IDEA for the assistive technician to fail to provide measurable goals and objectives. The assistive technician in his two assistive-technology updates did not assign numbers to his pseudo goals and objectives and he in fact testified that his measurement of progress was subjective—based on his years of work in the field of assistive technology. Therefore, while there was the equivalent of goals and objectives, there was no objective standard to gauge progress toward meeting the goals. *Z.R. v. Fort Lee Bd. of Educ.*, OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

IEP of a 19-year-old autistic student attending a special school in Kansas was revised to include transportation as a related service with the provision that, unless there were overriding behavior or safety concerns at the time of the two scheduled breaks in the Kansas school’s calendar, the student was to be provided during the breaks with the related service of round trip transportation with appropriate escorts for home visits to New Jersey, at district expense. The student was to be given the opportunity to make meaningful progress toward the ultimate goal of returning to his community and local school and, while it was beneficial for his parents to visit him in Kansas, it was also necessary for his long term educational progress that he be able to go home during the Kansas school’s two scheduled school breaks. *V.M. ex rel. C.M. v. Bridgewater-Raritan Reg’l Bd. of Educ.*, OAL Dkt. No. EDS 315-08, 2008 N.J. AGEN LEXIS 488, Final Decision (June 18, 2008).

## SUBCHAPTER 4. PROGRAMS AND INSTRUCTION

### 6A:14-4.1 General requirements

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

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

(c) The length of the school day and the academic year of programs for students with disabilities, including preschoolers with disabilities, shall be at least as long as that established for nondisabled students. The IEP team may, in its discretion, alter the length of the school day based on the needs of the student.

(d) District board of education operated special class programs for preschoolers with disabilities 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 student instruction, with the following exception:

1. Preschool disabled classes operated by a district board of education shall operate at least as long as any district program for nondisabled preschoolers, but not less than 10 hours per week.

(e) 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 offices.

(f) Physical education services, specially designed if necessary, shall be made available to every student with a disability age five through 21, including those students in separate facilities.

(g) When a student with a disability transfers from one New Jersey school district to another or from an out-of-State school district to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.

2. If the student transfers from an out-of-State district, the appropriate school district staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.

3. The appropriate school district staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.

(h) When the IEP of a student with a disability does not describe any restrictions, the student shall be included in the general education program provided by the district board of education.

1. When instruction in general education subjects or content areas is provided to groups consisting solely of students with disabilities, the size of the groups and age range shall conform to the requirements for special class programs described in this subchapter. An exception to the age range and group size requirements may be requested by writing to the Department of Education through the county office according to N.J.A.C. 6A:14-4.9.

2. When students with disabilities participate in physical education, intramural and interscholastic sports, non-academic and extracurricular activities in groups consisting solely of students with disabilities, the age range and group size shall be based on the nature of the activity, needs of the students participating in the activity and the level of supervision required.

(i) 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-10, 11, 14, and 14.1 and this chapter.

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

(k) The district board of education shall provide the parent with the opportunity to observe the proposed educational placement, including the general education setting, special class programs and out-of-district placements in a program operated by another district board of education or a private school placement, prior to implementation of the IEP.

(l) When a student with a disability receives instruction for a particular subject area in either a single-subject resource program or a special class program, the student shall receive at least the same amount of instructional time as that provided general education students for each subject area. For students in a single-subject resource program outside the general education class, the student's IEP shall specify the proportion of time in the general education classroom and the resource program for each subject area.

1. The provisions of this subsection shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. However, school districts may, at their discretion, adhere to the provisions of this subsection prior to July 1, 2007.

(m) When a student with a disability transfers from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.

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

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

In (c), inserted a reference to preschoolers with disabilities; in (d), inserted "with the following exception" in introductory paragraph and added 1; in (g)2, added "immediately"; in (k), deleted a reference to adult student.

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), deleted "change"; rewrote (c), (d) and (g); in the introductory paragraph of (h), substituted "general education" for "regular school"; in (h)1, rewrote the first sentence and updated the N.J.A.C. reference at the end; rewrote (k); added (l) and (m).

## 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).

Where the Greater Newark Charter School had placed a charter school special education student at a private school and the student subsequently moved from Newark to East Orange, the East Orange school district was not authorized to change the student's private placement; although the student was required to register in the East Orange district, the student was still an enrollee of the charter school under N.J.S.A. 18A:36A-8(b). A school district's challenge to a charter school's placement of a special education student or to the district's responsibility for costs is through an appeal to the Commissioner of Education under the Charter School Program Act, N.J.S.A. 18A:36A-11(b) and 18A:6-9, and not through the IDEA. E.M. ex rel. J.B. v. East Orange Bd. of Educ., OAL Dkt. No. EDS 12493-07, 2008 N.J. AGEN LEXIS 378, Final Decision (June 26, 2008).

Student entitled to same-sex aide for personal care during overnight camping trip. M.W. v. Shamong Township Board of Education, 97 N.J.A.R.2d (EDS) 102.

Petition regarding responsibility for costs of special education student's academic program was dismissed for lack of jurisdiction; allocation of costs was provided for in contract, and Commissioner of Education cannot decide issues of contract law. Cherry Hill v. Borough of Haddonfield, 96 N.J.A.R.2d (EDU) 1032.

Handicapped child entitled to same number of school hours offered to non-handicapped children of same age. D.S. v. Cresskill Board of Education, 96 N.J.A.R.2d (EDS) 379.

Failure to show that special education student had substantially regressed during the summer supported denial of extended school year services. S.T. v. Ewing Board of Education, 96 N.J.A.R.2d (EDS) 283.

Adverse outcome of prior federal lawsuit brought by handicapped former student against school board for failure to comply with IEP barred current action by student against board. E.A. v. Willingboro Township Board of Education, 96 N.J.A.R.2d (EDS) 113.

Child with increasing difficulties in reading and spelling required perceptually impaired classification to provide him with necessary support in a special education program. Spring Lake Board v. P.M., 95 N.J.A.R.2d (EDS) 267.

Perceptually impaired child was entitled to an extended school year in form of five hours per week of summer tutorial assistance with reasonable and necessary travel expenses. C.G. v. Old Bridge Board, 95 N.J.A.R.2d (EDS) 221.

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.

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.

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).

## 6A:14-4.2 Placement in the least restrictive environment

(a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:

1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
2. Special classes, separate schooling or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education 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. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;



4. Placement of a student with a disability is determined at least annually and, for a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered at least annually;

5. Placement is based on his or her individualized education program;

6. Placement is provided in appropriate educational settings as close to home as possible;

7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not a student with a disability;

8. Consideration is given to:

i. Whether the student can be educated satisfactorily 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 student with disabilities or the other students in the class;

9. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;

10. Placement in a program option is based on the individual needs of the student; and

11. When determining the restrictiveness of a particular program option, such determinations are based solely on the amount of time a student with disabilities is educated outside the general education setting.

(b) Each district board of education shall provide non-academic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.

1. In providing or arranging for the provision of non-academic and extracurricular services and activities, each district board of education shall ensure that each student with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate.

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

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

Added (b).

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

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

In (a)2, substituted "general education" for "regular" throughout; rewrote (a)4; in (a)7, substituted "a student with a disability" for "disabled" and deleted "and" at the end; added (a)9 through (a)11 and substituted "," for "." at (a)8iii.

### 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.

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

State 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).

Parents of a nine-year old student, who was classified as eligible for special education and related services due to blindness, cerebral palsy, and other disabilities, failed to carry their burden of proving denial of FAPE regarding the district's decision to move student from a mixed resource room/regular class program in her neighborhood school to a multiply disabled program at a different school, placing her in a self-contained multiply disabled classroom for all general education classes and a mainstream classroom for non-academic classes. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Although *L. 2007, c. 331* (N.J.S.A. 18A:46-1.1) places the burden of proof and burden of production in a due process hearing on the school district, petitioners requested a due process hearing on September 11, 2007, prior to the January 13, 2008 effective date of the act, and thus



were subject to previous law, which placed the burden of proof on the party seeking relief. *S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ.*, OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Where board of education maintained that it could provide a 10-year-old boy diagnosed with autism with an appropriate education in a self-contained class for autistic pupils within the school district and the child's parent contended that the child should remain in a self-contained class for multiply-disabled pupils in a public school outside of child's regular district, the placement proposed by the board was preferable; the in-district self-contained class was specifically designed for children with autism and was at the appropriate grade level for the child and a placement within the local school district was less restrictive than one that was in another school district. *J.G. ex rel. J.G. v. West New York Bd. of Educ.*, OAL Dkt. No. EDS 3385-08, 2008 N.J. AGEN LEXIS 893, Final Decision (May 6, 2008).

Grandparent guardians who sought to maintain the placement of their third-grade granddaughter with Downs Syndrome in the board's elementary school were denied such relief because the child's communication impairment necessitated her placement at a school for children with disabilities where her needs could be better served. *D.A. and M.A. ex rel. K. A. v. Pleasantville Bd. of Educ.*, OAL DKT. NO. EDS 2050-07, 2007 N.J. AGEN LEXIS 381, Final Decision (June 12, 2007).

Parents were entitled to tuition reimbursement for unilateral placement of their 16-year-old son at a private school where the IEP offered by the school district would not have provided him with a FAPE for the school year, and expert testimony showed that he would be at great risk of recurring symptoms of anxiety and depression that would interfere with his learning if he were placed in the public high school program proposed by the district. *S.C. ex rel. D.C. v. Montgomery Twp. Bd. of Educ.*, OAL DKT. NO. EDS 10147-04, 2005 N.J. AGEN LEXIS 933, Final Decision (December 22, 2005), aff'd, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 26, 2007) (unpublished opinion).

School board was not required to reimburse parents for unilateral placement of special education student (with reading problems) in an out-of-district school where the Board had presented persuasive proof that the placement of the student in its middle school would have met the requirements for a free and appropriate education. While the out-of-district school had an excellent reputation and it was possible that its program would have been better suited for student's needs, the law is clear: the Board does not have to provide for the best possible placement, its legal obligation is to provide for an appropriate education. Additionally, out-of-district school did not meet state and federal requirement of providing for education in the least restrictive environment. *J.S. ex rel. M.S. v. Florence Twp. Bd. of Educ.*, OAL Dkt. No. EDS 8575-01, 2005 N.J. AGEN LEXIS 929, Final Decision (December 19, 2005).

Parent, who believed that her son no longer needed special education services and sought to disenroll him or alternatively have him placed at another school, failed to demonstrate that the child's current placement was not appropriate or that her son no longer needed special education; extensive testimony showed that the child needed both behavioral and academic special services. *S.C. ex rel. M.C. v. Newark Bd. of Educ.*, OAL DKT. NO. EDS 12332-05, 2005 N.J. AGEN LEXIS 957, Final Decision (December 14, 2005).

Special student's babysitter's location used to meet legal requirement of placing student in appropriate educational setting closest to student's home. *Upper Freehold Regional School District v. K.B.*, 97 N.J.A.R.2d (EDS) 50.

In-district placement of special education student was appropriate where placement conferred some educational benefit and constituted least restrictive environment. *K.H. v. Wayne Township Board of Education*, 96 N.J.A.R.2d (EDS) 226.

Residential placement was ordered for classified student who had regressed in day placement. *J.M. v. Pemberton Borough Board of Education*, 96 N.J.A.R.2d (EDS) 163.

Residential placement was necessary to meet needs of trainable mentally retarded student. *R.H. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDS) 133.

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 (EDS) 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.

#### 6A:14-4.3 Program options

(a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. Single subject resource programs outside the general education class;
2. A special class program in the student's local school district;
3. A special education program in another local school district;
4. A special education program in a vocational and technical school;
5. A special education program in the following settings:
  - i. A county special services school district;
  - ii. An educational services commission;

iii. A jointure commission; and

iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;

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

7. A community rehabilitation program;

8. A program in a hospital, convalescent center or other medical institution;

9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;

10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;

11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and

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

(c) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.

1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.

(d) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a board of education according to the following:

1. Such early childhood program shall be licensed or approved by a governmental agency;
2. The district board of education shall assure that the program is nonsectarian;
3. The district board of education shall assure the student's IEP can be implemented in the early childhood

program with any supplementary aids and services that are specified in the student's IEP; and

4. The special education and related services specified in the student's IEP shall be provided by appropriately certified and/or licensed personnel or by paraprofessionals according to N.J.A.C. 6A:14-3.9(a) or 4.1(e).

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

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

Added (b)1.

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

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

Added new (a) and recodified former (a) as (b), with substantial changes; recodified former (b) and (c) as (c) and (d), with an amendment to the first N.J.A.C. reference at new (d)4.

#### Case Notes

School board could not consider as least restrictive environment a private preschool program in which preschool handicapped child could receive supplementary services since it was not accredited by the state. *T.R. v. Kingwood Township Board of Education*, 32 F.Supp.2d 720 (D.N.J. 1998).

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).

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).

School board was required to place 18-year-old, non-verbal, autistic boy in private institution, notwithstanding the fact that the institution was not approved by the New Jersey Department of Education as a private school provider, where parents and school board both stipulated that private institution was the only appropriate placement, out-of-district day and residential placements had not worked for the student in the past, no other placement had been proposed, and the choice was the private school or no program at all. It would be contrary to the purposes of the Individuals with Disabilities Education Act to deny placement based on the alleged technical deficiency. *C.A. ex rel. N.A. v. Middle Twp Bd. of Educ.*, OAL Dkt. No. EDS 8703-06, 2007 N.J. AGEN LEXIS 285, Final Decision (April 30, 2007).

Emergency relief granted for extended school year services for 10-year-old student in the area of speech/language, where the child's IEP explicitly stated that extended school year programming was recommended; the district could not unilaterally ignore the extended school year element of the IEP it had implemented. However, parent had not shown a sufficient evidential basis for extended school year programming in the areas of behavior management and social skills training. *C.F. ex rel. T.F. v. Franklin Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4411-06, 2006 N.J. AGEN LEXIS 439, Emergent Relief Decision (June 30, 2006).

Emergency relief denied, seeking extended year placement of third-grade student at an out-of-district placement for children with ADHD; irreparable harm not shown because district was offering the student an extended year school program that had the necessary components to address his disability, even though the district did not agree that a summer program was needed. *P.C. ex rel. T.C. v. Jackson Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4326-06, 2006 N.J. AGEN LEXIS 410, Final Decision (June 21, 2006).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. *Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P.*, OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

A school district is not obligated to provide an in-district placement as long as it complies with its obligation to have available a full continuum of alternative placements to meet the needs of its students with disabilities. *Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P.*, OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

School Board granted permission to place student in P.I. program. *Jersey City v. A.C.*, 97 N.J.A.R.2d (EDS) 55.

No emergency out-of-state placement for special education student if petition fails to meet standard for emergency relief. *A.C. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 21.

Autistic preschooler was not ready to be mainstreamed for non-academic courses. *C.L. v. State Operated School District*, 96 N.J.A.R.2d (EDS) 331.

Special education student was entitled to remain at out-of-state extended year program he had attended previous year, even though program lacked state approval. *G.B. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 284.

Emergency relief request for summer school for disabled preschooler was denied on grounds that it merely represented extension of ten-month school year. *N.R. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 270.

Emergency relief request for summer in-home tutor was denied absent evidence of probable regression or lack of appropriate education. *C.N. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 259.

Request for summer instruction was granted for classified student whose test scores showed regression. *S.M. v. Ocean Gate Board of Education*, 96 N.J.A.R.2d (EDS) 207.

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.

Residential placement of handicapped student not necessary. *J.M. v. Morris Board of Education*, 95 N.J.A.R.2d (EDS) 10.

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.

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor, Division of Vocational

Rehabilitation Services, the New Jersey Department of Human Services, Commission for the Blind and Visually Impaired and the Department of Human Services, Division

of Developmental Disabilities, to provide vocational evaluation, work adjustment training, job coaching, skill training, supported employment and time-limited job coaching;

2. Placement shall be made according to the student's IEP. The IEP shall specify the core curriculum content standards to be met and shall address how the instruction will be provided; and

3. Within 10 calendar days of placement in community rehabilitation facilities, the district board of education shall provide written notification of the placement to the county office.

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

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

In (b)3, divided the learning and/or language disabilities program category into Mild to moderate and Severe.

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

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

Amended (b)3; in (d)2, added second sentence.

Amended by R.2001 d.397, effective November 5, 2001.

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

In (f), rewrote 1.

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

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

Rewrote the section.

Notice of Rule Invalidation.

See: 39 N.J.R. 4572(a).

Validity of 6A:14-4.7(a)2 affected by Council on Local Mandates decision *In the Matter of Complaints Filed by the Special Services School Districts of Burlington, Atlantic, Cape May, and Bergen Counties* (Adopted by the Council and Issued: July 26, 2007).

#### Case Notes

State special education regulations governing placement of secondary-level students in community rehabilitation programs for vocational rehabilitation services, permitting students to be placed in programs approved by the state Division of Vocational Services (DVRs), were insufficiently broad to encompass placement in programs approved by agencies serving the blind or those so severely developmentally disabled as to be unemployable, as required under the Individuals with Disabilities Education Act (IDEA). *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-4.8 Program criteria: home instruction

(a) A student with a disability shall have his or her IEP implemented through one to one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.

1. Prior written notification that a district intends to provide home instruction shall be provided to the Department of Education through its county office.

2. Notification shall be effective for a maximum of 60 calendar days at which time renewal of the notification may be made. Each renewal shall be for a maximum of 60 calendar days.

3. A written record of the student's home instruction, including dates and times during which home instruction is provided, shall be maintained, and the teacher providing instruction shall be appropriately certified as teacher of stu-

dents with disabilities or for the subject or level in which the instruction is given.

4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher or teachers on at least three separate days.

5. Instruction shall be provided at a location conducive to providing educational services, taking into consideration the student's disability and any unique circumstances. The parent shall be consulted in determining the appropriate location for the provision of home instruction.

6. If a parent repeatedly fails to make a student available for scheduled home instruction, the district board of education shall consider whether the student is truant in accordance with N.J.S.A. 18A:38-27 and proceed accordingly.

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

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

Rewrote (a)1 and 2.

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

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

In the introductory paragraph of (a), substituted "with a disability" for "classified as disabled"; rewrote (a)3; in (a)4, inserted "or teachers"; added (a)5 and (a)6.

#### Case Notes

Emergent relief of 15 hours of home instruction per week ordered as an interim measure for an autistic student who suffered abusive violation of rights at a residential placement. *S.T. v. Matawan-Aberdeen Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 2382-08, 2008 N.J. AGEN LEXIS 297 (April 14, 2008).

Under N.J.S.A. 18A:36A-11(b), the school district of residence is not responsible for the costs of home instruction for disabled charter school students, as opposed to private day or residential school placement; clear statutory and regulatory distinctions exist between "home instruction," which may be provided for through contracts with "private clinics and agencies," N.J.A.C. 6A:14-5.1(c)liv, and "private schools for the disabled." *Golden Door Charter School v. State-Operated School Dist. of Jersey City*, OAL Dkt. No. EDU 1169-06, 2007 N.J. AGEN LEXIS 302, Commissioner's Decision (March 15, 2007), aff'd, SB No. 10-07, 2007 N.J. AGEN LEXIS 887 (N.J. State Bd. of Educ. August 1, 2007), aff'd per curiam, 2008 N.J. Super. LEXIS 129 (App.Div. 2008).

Classified student was properly placed on home instruction due to his disruptive behavior. *East Windsor Board of Education v. B.F.*, 96 N.J.A.R.2d (EDS) 195.

Special education school's closure requires unprepared autistic student's home instruction under strict program until attainment of generalization. *J.S. v. High Bridge Board of Education*, 96 N.J.A.R.2d (EDS) 68.

Home instruction was not better for student than placement in self-contained class for pupils having emotional difficulties. *Hamilton Township v. J.C.*, 95 N.J.A.R.2d (EDS) 157.

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.

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.



Placement of violent student in home study program pending results of child study team. *Oaklyn Bd. of Educ. v. C.G.*, 93 N.J.A.R.2d (EDS) 97.

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.

Gifted student with cerebral palsy was entitled to home instruction as interim placement. *J.M. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 249.

#### 6A:14-4.9 Exceptions

(a) Exceptions for the age range and group sizes specified in N.J.A.C. 6A:14-4.4 through 4.7 shall be granted:

1. On an individual basis;
2. Only with prior written approval of the Department of Education through its county office; and
3. For a period not to exceed the balance of the school year.

(b) The county office shall determine whether the granting of the exception would interfere with the delivery of a free, appropriate public education to the student, or other students in the group and on that basis shall either:

1. Approve the request; or
2. Deny the request.

(c) If the request is denied, the district is still obligated to implement the IEP.

(d) The parent of a student with a disability for whom the exception is requested, and the parents of the students who are affected by the request for an exception shall be informed by the district board of education that such a request is being submitted to the county office of education.

(e) Upon approval of the exception by the county office, the district board of education or the appropriate education agency shall inform the parents of the students with disabilities who are affected by the exception.

(f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter.

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)3, substituted "the balance of the school" for "one" preceding "year"; and in (d), deleted a reference to adult student.

Recodified from N.J.A.C. 6A:14-4.10 and amended by R.2006 d.315, effective September 5, 2006.

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

In (f), deleted last sentence. Former N.J.A.C. 6A:14-4.9, Home instruction due to temporary illness or injury for students with or without disabilities, repealed.

#### 6A:14-4.10 Statewide assessment

(a) Students with disabilities shall participate in the Statewide assessment system according to the following:

1. Except as provided in (a)2 below, students with disabilities shall participate in each content area of the general Statewide assessment for their grade. Accommodations and modifications approved by the Department of Education shall be provided when determined necessary by the IEP team to students with disabilities who participate in the general Statewide assessments.

2. Students with disabilities shall participate in the Alternate Proficiency Assessment (APA) in each content area where the nature of the student's disability is so severe that the student is not receiving instruction in any of the knowledge and skills measured by the general Statewide assessment and the student cannot complete any of the types of questions on the assessment in the content area(s) even with accommodations and modifications.

3. Following the 11th grade, students with disabilities who are required to pass the HSPA for graduation and have not done so shall participate in the SRA in accordance with N.J.A.C. 6A:8. If a student is participating in the SRA as determined by the IEP team, the student shall not be required to again participate in the HSPA and pass that assessment.

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

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

In (a)4, inserted "after one administration of the High School Proficiency Test when the student fails one or more sections of the test and" following "when".

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

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

Rewrote the section.

Recodified from N.J.A.C. 6A:14-4.11 and amended by R.2006 d.315, effective September 5, 2006.

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

In (a)1, deleted "or age" following "grade"; in (a)3, added the second sentence. Former N.J.A.C. 6A:14-4.10, Exceptions, recodified to N.J.A.C. 6A:14-4.9.

#### 6A:14-4.11 Graduation

(a) The IEP of a student with a disability who enters a high school program shall specifically address the graduation requirements. The student shall meet the high school graduation requirements according to N.J.A.C. 6A:8-5.1(c), except as specified in the student's IEP. The IEP shall specify which requirements would qualify the student with a disability for the State endorsed diploma issued by the school district responsible for his or her education.

(b) Graduation with a State endorsed diploma is a change of placement that requires written notice according to N.J.A.C. 6A:14-2.3(f) and (g).

1. As part of the written notice, the parent shall be provided with a copy of the procedural safeguards statement published by the Department of Education.

2. As with any proposal to change the educational program or placement of a student with a disability, the parent may resolve a disagreement with the proposal to graduate

Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

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).

District where nonpublic school was located would be responsible for providing Chapter 192-193 services to students attending that school. *Board of Education of the City of Clifton v. State-operated School District of the City of Paterson*, 96 N.J.A.R.2d (EDU) 811.

Reimbursement request for costs of special education student's private school placement was denied where testimony of student's former teacher indicated that in-district placement conferred educational benefit. *E.S.G. v. Collingswood Board of Education*, 96 N.J.A.R.2d (EDS) 213.

Reimbursement for out-of-district placement was denied where child study team found in-district placement to be appropriate. *C.G. v. Oakland Board of Education*, 96 N.J.A.R.2d (EDS) 199.

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.*

**6A:14-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

(a) The board of education of the district in which the nonpublic school is located shall provide to nonpublic school students the programs and services required by this subchapter by itself, or through joint agreements with other boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6A:14-5.

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

(c) Identification, evaluation, determination of eligibility, development of service plans and the provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(d) English as a second language shall be provided according to N.J.S.A. 18A:46A-2c.

(e) Compensatory education shall be provided according to N.J.S.A. 18A:46A-2e.

(f) All special education programs and services required by this subchapter shall be provided with parental consent in accordance with N.J.A.C. 6A:14-2.3.

(g) Those procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.

1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools.

i. For the services provided, the service plan for a student with a disability enrolled in a nonpublic school shall include the components described in N.J.A.C. 6A:14-3.7(e)1 through 6, (e)8 and (e)14 through 16.

2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.

(h) Personnel providing a program or service under this subchapter shall be highly qualified and shall meet appropriate certification and if required, licensing requirements. Personnel shall not be employed by the nonpublic school in which the student is enrolled with the exception of personnel providing the types of instruction specified in N.J.A.C. 6A:14-5.1(c)2ii and iii.

(i) Programs and services for nonpublic school students 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.

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

(k) When the provision of programs and/or services under this subchapter requires transportation or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall provide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter.

(l) The board of education of the district in which the nonpublic school is located shall maintain all records of nonpublic school students receiving programs and/or services under this subchapter according to N.J.A.C. 6A:32.

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

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

In (c), substituted a reference to service plans for a reference to individualized education programs; and in (g), added 1 and 2.

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

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

In (g)1i, updated N.J.A.C. references; in (h), inserted "be highly qualified and shall"; in (l), updated the N.J.A.C. reference.

**6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

(a) Each board of education of the district in which the nonpublic school is located shall provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds.

(b) Each board of education of the district in which the nonpublic school is located shall maintain an accounting system for nonpublic programs and services according to N.J.A.C. 6A:23.

(c) At the close of each school year, the board of education shall report to the Department of Education the total district cost for programs and services provided under this subchapter.

(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, 18A:58-16, 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 placement 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.

Continued placement of perceptually impaired student in otherwise appropriate private school was required until program in public school provided some educational benefit. *K.G., A Minor v. Haddonfield Board*, 95 N.J.A.R.2d (EDS) 167.

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.

Present public school environment was more appropriate for neurologically impaired child than out-of-district placement. *A.H. v. Hamburg Board*, 95 N.J.A.R.2d (EDS) 52.

Handicapped student could not be placed in school not able to provide student with appropriate educational services. *B.G. v. Manasquan Public School System*, 95 N.J.A.R.2d (EDS) 22.

Placement of neurologically impaired student in non-public school was not appropriate absent required certification. *B.G. v. Manasquan*, 95 N.J.A.R.2d (EDS) 22.

Reimbursement of parents for tuition paid for handicapped student's placement in nonapproved private school was justified. *C.D. v. Wanaque*, 93 N.J.A.R.2d (EDS) 154.

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.

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.

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 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.

Parents not entitled to reimbursement of tuition expenses for unilateral placement of child in private school. K.S. v. East Brunswick Board of Education, 92 N.J.A.R.2d (EDS) 159.

Parents not entitled either to placement of child at nonapproved private school nor to reimbursement of tuition. M.H. v. Union Township Board of Education, 92 N.J.A.R.2d (EDS) 132.

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.



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

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

In (d), inserted "consecutive or cumulative" preceding "school days"; and amended the N.J.A.C. reference in the last sentence.

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

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

Rewrote the section.

#### **6A:14-7.7 Termination or withdrawal from a receiving school**

(a) When a receiving school is considering the termination of a student's placement prior to the end of the student's academic year, the receiving school shall immediately contact the district board of education. The district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall occur within 10 school days of the date of the notification and shall include the participation of appropriate personnel from the receiving school, including a minimum of one person who participated in making the recommendation to terminate the placement.

1. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided within 10 days of the date of the IEP meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(b) When the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year, the district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be