

**CHAPTER 14**  
**SPECIAL EDUCATION**

**Authority**

N.J.S.A. 18A:4-15, 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:7F-1 et seq., 18A:39-1.1, 18A:40-4, 18A:46-1 et seq., and 18A:46A-1 et seq.; and U.S.P.L. 93-112, § 504; 94-142; 99-457; 101-476; 105-17; and 108-446.

**Source and Effective Date**

Effective: June 26, 2013.  
See: 45 N.J.R. 1909(c).

**Chapter Expiration Date**

Chapter 14, Special Education, expires on June 26, 2020.

**Chapter Historical Note**

Chapter 14, Special Education, was adopted as R.1998 d.334, effective July 6, 1998. See: 30 N.J.R. 1219(b), 30 N.J.R. 2435(a).

Chapter 14, Special Education, was readopted as R.2003 d.387, effective September 8, 2003. See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Chapter 14, Special Education, was readopted as R.2006 d.315, effective August 4, 2006. As a part of R.2006 d.315, Appendices A through E were repealed, and Appendices A through G were adopted as new rules, effective September 5, 2006. See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14, Special Education, was scheduled to expire on August 4, 2013. See: 43 N.J.R. 1203(a).

Chapter 14, Special Education, was readopted with technical changes, effective June 26, 2013. See: Source and Effective Date.

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## SUBCHAPTER 1. GENERAL PROVISIONS

### Law Review and Journal Commentaries

Special Education: A Promise to Children with Disabilities. Viola S. Lordi, 193 N.J.L.J. 10 (1998).

### 6A:14-1.1 General requirements

(a) The rules in this chapter supersede all rules in effect prior to September 5, 2006 pertaining to students with disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.);

2. Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an individualized education program is in effect for the student by that date;

3. Ensure that a free, appropriate public education is available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade;

4. Ensure that the services and placement needed by each student with a disability to receive a free, appropriate public education are based on the student's unique needs and not on the student's disability;

5. Ensure that students with disabilities are educated in the least restrictive environment;

6. Ensure the provision of special education and related services;

7. Ensure that the rights of students with disabilities and their parents are protected;

8. Assist public and private agencies providing educational services to students with disabilities; and

9. Ensure the evaluation of the effectiveness of the education of students with disabilities.

(c) The rules in this chapter shall apply to all public and private education agencies providing publicly funded educational programs and services to students with disabilities.

1. Programs and services shall be provided to students age three through 21.

2. Programs and services may be provided by a district board of education at its option to students below the age of three and above the age of 21.

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of children with disabilities below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent;

2. Be administered, supervised and provided by appropriately certified and qualified professional staff members;

3. Be located in facilities that are accessible to the disabled; and

4. Meet all requirements of this chapter.

(e) With the exception of students placed in nonpublic schools according to N.J.A.C. 6A:14-6.5, all students with disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(f) Each district board of education shall ensure that the hearing aids worn by children who are deaf and/or hard of hearing are functioning properly.

(g) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.

(h) All public and private agencies that provide educational programs and services to students with disabilities shall maintain documentation demonstrating compliance with this chapter.

(i) A school district shall not require a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. §§801 et seq.) as a condition of attending school, receiving an evaluation for eligibility for special education and related services or for receiving special education and related services.

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 i through iii.

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 ";" 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).

Notice of readoption with technical change.

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

### 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).

Individualized Education Program developed for a student who had a moderately severe hearing loss did not provide her with a free appropriate public education as required by 20 U.S.C.S. § 1400(d)(1)(A), (B), and N.J.A.C. 6A:14-1.1. Contrary to reports and evaluations by the New Jersey Specialized Child Study Team, the Mount Olive Township Board of Education did not use sign language to support expressive speech while teaching the student and did not check her auditory environment using the Ling 6 Method or any other method. The administrative law judge found that the plan for the student to be in a half day program was woefully insufficient particularly during this critical time in her development of language. *D.H. and J.H. ex rel. L.H. v. Mount Olive Twp. Bd. of Educ.*, OAL DKT. NO. EDS 08290-13, 2014 N.J. AGEN LEXIS 463, Initial Decision (August 11, 2014).

An Administrative Law Judge concluded that the parents of a 10 year old learning-disabled child were entitled to reimbursement for the cost of the child's attendance at an out-of-district private school notwithstanding that that school, though accredited, was not "approved" by the Department of Education for the education of learning disabled children. Once it was determined that the public school was not providing the child with a free and appropriate public education within the meaning of 20 U.S.C.S. § 1412 and N.J.A.C. 6A:14-1.1, the central inquiry was whether the substitute placement—here, a private school—conferred a meaningful educational benefit on the child. That the methods used in the public school were not effective was evident in the child's steady performance decline from second to third grade and his increased anxiety and emotional frustration as the work became more advanced. The IEP developed per N.J.A.C. 6A:14-3.7(b) that was in place during the last year of his public school attendance education did little more

than repeat the same goals and objectives from the two prior years, without offering a way to address problems that had manifested themselves in the intervening time. Moreover, the record showed that the student's performance was regressing, not progressing. Since the program used by the public school was not effective in educating the student due to his unique language-processing disorder and since it appeared that the program in the out-of-district private school was better adapted to the student's needs, the placement was appropriate even if it did not meet the standards provided by the district board of education per N.J.A.C. 6A:14-2.10(b) and the parents were entitled to reimbursement of the resulting expenses. *S.S. and H.S. ex rel. P.S. v. Colts Neck Twp. Bd. of Educ.*, OAL Dkt. No. EDS 13645-12, AGENCY Dkt. No. 2013 18904, 2014 N.J. AGEN LEXIS 81, Final Decision (February 14, 2014).

Board of Education (District) did not deny a student a free appropriate public education during a time when he was entitled to it pursuant to N.J.A.C. 6A:14-1.1(d). The District sought to provide the student with services but was hindered by his hospitalization, by state law in that he was over the age of majority and thus his mother could not act on his behalf, and by his failure to communicate with the District so that it could otherwise arrange for enrollment. *J.S. v. East Orange Bd. of Educ.*, OAL Dkt. No. EDS 00917-13, 2013 N.J. AGEN LEXIS 119, Final Decision (June 5, 2013).

Board of Education was not required to provide a child, who was eligible for special education and related services due to his multiple disabilities, transportation to and from after-school extracurricular activities. The extracurricular activities were not necessary for the child to make meaning educational progress because social skills development was integrated into the curriculum of each class throughout the day. *C.M. ex rel. J.M. v. South Plainfield Bd. of Educ.*, OAL Dkt. No. EDS 16928-12, 2013 N.J. AGEN LEXIS 74, Final Decision (April 3, 2013).

District's proposed program would have provided an 11-year-old communication impaired student with a FAPE in the least restrictive environment where it included: a full day program at the middle school in the student's home district; academic instruction by a special education teacher in a small group of two to six students; mainstreaming for cycle classes; an aide or peer buddy for some non-structured parts of the day; speech and language therapy; a social skills component, consisting of a group setting; and individual counseling. Therefore, the parents were not entitled to reimbursement for the time that the student spent at a private academy of their choosing. *C.T. ex rel. R.T. v. Robbinsville Bd. of Educ.*, OAL Dkt. No. EDS 04682-10 and EDS 07825-10, 2011 N.J. AGEN LEXIS 18, Final Decision (January 14, 2011).

While the district made a good-faith effort to mainstream a student with severe dyslexia and ADHD by keeping her in mainstream classes except for the two areas in which her learning disabilities were the most pronounced, the district did little more to help her keep pace with mainstream students beyond books on tape. Given the severity of the student's disability, she was unable to make meaningful progress and the district's program was not the least restrictive environment appropriate for her. *J.M. ex rel. M.M. v. Morris School District Bd. of Educ.*, OAL Dkt. No. EDS 03830-10, 2010 N.J. AGEN LEXIS 625, Final Decision (November 24, 2010).

Ten-hour-per-week outreach program no longer conferred meaningful benefit to a 14-year-old autistic student because it was merely a continuation of the academic regular-day program, which was already conferring meaningful benefit. It lacked goals and objectives that differed from the regular-day academic program; as such, the district did not deny the student of a FAPE by proposing an elimination of the program in exchange for functional training or coaching in the home for the parents. *S.N. ex rel. I.N. v. North Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 05864-09, 2010 N.J. AGEN LEXIS 555, Final Decision (October 7, 2010).

IEP rejected by the parents provided an 11-year-old emotionally disturbed student with the opportunity for significant learning and meaningful educational benefit consistent with her abilities and educational needs, including: a full day program at the middle school; placement in the school's resource center for Reading, Language Arts and Social Studies; replacement mathematics, supplemental reading and in-class

support science; and weekly counseling. The parents' unilateral placement of the student in an alternate program could not be reimbursed where the district had offered a FAPE. R.S. ex rel. E.S. v. Montgomery Twp. Bd. of Educ., OAL Dkt. No. EDS 14008-09, 2010 N.J. AGEN LEXIS 322, Final Decision (July 19, 2010).

Although the district was making admirable attempts to accommodate a fourth-grader who was deemed "emotionally disturbed" by placing him in a Behavioral Disabilities Classroom and allowing him to excel academically, the district was not meeting the student's needs because there was no opportunity for the cognitively astute student to learn much-needed social skills from his peers; the priority for the student's programming should have been the direct teaching of social reasoning and social problem-solving skills needed to interact in a group, which the district failed to provide. An out-of-district academy was organized to provide the student with an immersion of social skills taught throughout the school day while giving him the opportunity to practice those skills with support from a skilled staff person in small-group, controlled contexts and would meet his needs in the areas of hyperactivity, impulsivity, difficulty with social boundaries, perspective-taking, ability to pick up on social cues, difficulty with homework completion, difficulty maintaining attention to task, difficulty following routines, difficulty following directions, exhibiting inappropriate attention-seeking behaviors, handwriting difficulties, and difficulty with written expression, and counseling for mood problems. P.B. ex rel. T.B. v. Wanaque Bd. of Educ., OAL Dkt. No. EDS 09260-09, 2010 N.J. AGEN LEXIS 303, Final Decision (June 16, 2010).

Eight-year-old severely emotionally impaired student was entitled to an extended school year program in order to prevent regression and, while the district had offered a summer program, it was only a two-week, three-hour a day, four-day each week program of occupational, speech, and language therapies, whereas the student was in need of a summer camp known for its therapeutic behavior-modification program with the focus on the student's anger issues and self-control issues. S.C. ex rel. M.C. v. North Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 5449-09, 2009 N.J. AGEN LEXIS 452, Final Decision (June 9, 2009).

Parents of a nine-year-old autistic child could not compel the district to provide a certain play-based education modality during the school year and during the extended school year summer program because the district's use of eclectic modalities was sufficient; the student was making progress academically, socially and behaviorally through flexible instruction and his communication skills, social skills and behavior also progressed. K.B. ex rel. J.B. v. Cherry Hill Twp Bd. of Educ., OAL Dkt. No. EDS 8663-08, 2009 N.J. AGEN LEXIS 309, Final Decision (May 29, 2009).

School district remained responsible for the acts or omissions of an out-of-placement program that denied the parents' expert access to the facility in order to judge its appropriateness for their three-year-old autistic child; the district's obligation to provide the child with a free appropriate public education and related services continued, even in the event of an out-of-district placement. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

Parent of a 21-year-old multiply disabled student was not entitled to compensatory education for reading and handwriting where the district provided the student with a FAPE; the IEPs were designed to provide the student with an additional two years of services to assist him with vocational skills and, although he may not have progressed in reading and handwriting during these two years, the district did have a program to provide a meaningful educational benefit to him. T.M. ex rel. M.M. v. Gloucester City Bd. of Educ., OAL Dkt. No. EDS 8789-08, 2009 N.J. AGEN LEXIS 234, Final Decision (April 15, 2009).

Eighteen-year-old multiply disabled student who was expelled from school following his conviction on criminal charges unrelated to his disability was not denied a FAPE because the district offered the student home instruction even after his expulsion; the only obstacle preventing the student's home instruction was his own obstinacy and refusal to participate in home instruction. M.A. ex rel. v. P.A. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 12339-08, 2009 N.J. AGEN LEXIS 235, Final Decision (April 7, 2009).

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).

Parent of an emotionally disturbed high school student failed to demonstrate that the school district's proposed out-of-district placement would deny a FAPE to the student; in fact, the out-of-district placement was necessary to deal with the student's disciplinary issues, which included bumping a classroom assistant and yelling at her, ignoring numerous directives from teachers, pointing an Exacto knife at a teacher, violence against other students, and ignoring requests of his "shadow aide" and using profanity against him. K.P. ex rel. B.P. v. Black Horse Pike Reg'l Bd. of Educ., OAL DKT. EDS 6365-07, 2007 N.J. AGEN LEXIS 777, Final Decision (October 19, 2007).



Child who was incapable of receiving any meaningful education within her regular school environment or any other physical site placement due to the onset of her disabling medical conditions was entitled to approval of an on-line accredited high school not otherwise included as an approved placement for classified students under listings maintained by the New Jersey Department of Education. S.D. ex rel. C.D. v. Lenape Reg'l Bd. of Educ., OAL DKT. EDS 6752-07, 2007 N.J. AGEN LEXIS 657, Final Decision (September 20, 2007).

*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).

Child's entitlement to special education did not depend upon the vigilance of the parents because parents and guardians were not always sophisticated enough to understand a child's problems or rights, nor did they always have the resources, whether monetary, emotional, or educational, to pursue the most appropriate educational placement for their children. Rather, it was the responsibility of the school district and its staff who oversaw the individual child's education to determine his or her needs and placement, and to adjust to changes in the child and deficiencies in the educational services provided; as such, a breakdown in communication between a disabled student's mother and the district did not absolve the district of its duty to provide appropriate educational services to the student. M.S. ex rel. K.E. v. Camden City Bd. of Educ., OAL DKT. EDS 698-07, 2007 N.J. AGEN LEXIS 473, Final Decision (August 3, 2007).

Disabled student had not changed domicile after spending two months at his grandmother's in a neighboring community while his mother was temporarily hospitalized for mental health issues. Since the district had not arranged to have him returned to a full time school placement, and since he required individualized care and attention, his family was forced to have him cared for at his grandmother's home. M.S. ex rel. K.E. v. Camden City Bd. of Educ., OAL DKT. EDS 698-07, 2007 N.J. AGEN LEXIS 473, Final Decision (August 3, 2007).

Where the record revealed that at the time a student was about to enter fifth grade, his reading and writing skills were so weak and deficient that he would not have been able to succeed in a mainstream setting because of the note-taking requirements, writing and reading necessary to succeed in all academic areas of a fifth-grade curriculum, a mainstream setting with resource room pull-out for reading, language arts, and math

was not the appropriate program and placement; instead, the student should have been placed in a small class setting in all subjects with intensive teacher support would better serve the child's needs. M.M. ex rel. R.M. v. North Brunswick Twp. Bd. of Educ., OAL DKT. EDS 8157-06, 2007 N.J. AGEN LEXIS 230, Final Decision (April 20, 2007).

Board of education was granted its request to release copies of an autistic student's educational records to certain schools approved for classified students in order to facilitate new placement of the student. Ocean Twp. Bd. of Educ. v. J.B. ex rel. M.B., OAL DKT. EDS 593-07, 2007 N.J. AGEN LEXIS 297, Final Decision (February 22, 2007).

Multiply disabled student was not denied a FAPE during his 7th and 8th grade school years where he was provided a 504 accommodation plan for his hearing impairment in lieu of re-classification as learning disabled. The evidence clearly demonstrated that the student was smart and did well in school, benefiting from the 504 plan. R.M. ex rel. J.M. v. Medford Lakes Borough Bd. of Educ., OAL DKT. EDS 6056-04, 2007 N.J. AGEN LEXIS 65, Final Decision (February 8, 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).

Parents of a nine-year-old autistic student failed to prove by sufficient, competent, and credible evidence that additional hours of in-home training and applied behavioral analysis (ABA) was needed to provide the student with a FAPE where the district's experts who worked with the student testified that he was making meaningful education progress. The student's abilities were quite limited and his progress was incremental and frustrating for his mother, but there was simply no showing that increased hours of in-home service and ABA training were necessary for a FAPE. A.M. ex rel. A.D. v. Toms River Reg'l Bd. of Educ., OAL DKT. EDS 6295-06, 2006 N.J. AGEN LEXIS 835, Final Decision (October 12, 2006).

School district's petition seeking an order approving a student's IEP was granted where the district presented overwhelming evidence that the IEP would provide the student with a FAPE and the courses selected for the student were all consistent with his testing from the prior year. Although the parents wanted a more challenging curriculum for the student and wanted to sign a waiver, the waiver process was not used for special education students because of the district's responsibilities under the IDEA. J.T. ex rel. G.T. v. Washington Twp. Bd. of Educ., OAL DKT. EDS 6459-06 and EDS 6460-06 (Consolidated), 2006 N.J. AGEN LEXIS 836, Final Decision (October 3, 2006).

Parents' request for placement of their five-year-old language delayed child in a sectarian private school was denied where the board had offered a free and appropriate education for the child in the least restrictive environment, which included a self-contained classroom that promoted contact with non-disabled children and was located in the child's neighborhood. J.C. ex rel. C.C. v. Passaic City Bd. of Educ., OAL DKT. EDS 7644-06, 2006 N.J. AGEN LEXIS 807, Final Decision (September 18, 2006).

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).

Parents were not entitled to compensatory education for their multiply disabled daughter where they failed to present credible expert testimony

that their child's IEP was inappropriate or that her placement should be changed; their expert's testimony was flawed and contradictory and the expert's comment that the alternative placement for the student was "ideal" was of no consequence where the student was not entitled to an ideal placement under the IDEA, but only a "meaningful" one. J.B. ex rel. K.B. v. Flemington-Raritan Reg'l Bd. of Educ., OAL DKT. EDS 6205-05, 2006 N.J. AGEN LEXIS 46, Final Decision (January 26, 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).

Parents of a special education student failed to show that he was not receiving a FAPE at his old high school where the standardized testing demonstrated that he made progress, he received above-average grades, and there was no proof to corroborate the parents' claim that the grades were falsified or inflated; their son was in a competitive school district, in college preparatory classes, honors classes and advanced placement classes, received mostly "As" and was an above-average student, who was excelling in light of his aptitude and in spite of his mild disability. J.A. ex rel. J.A. v. Mountain Lakes Bd. of Educ., OAL Dkt. No. EDS 9732-04, 2005 N.J. AGEN LEXIS 559, Final Decision (September 27, 2005), aff'd No. 05-CV-05953, 2006 U.S. Dist. LEXIS 66991 (U.S. Dist. Ct. for the Dist. of N.J., September 6, 2006).

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).

Twenty-year-old autistic student was entitled to compensatory education as well as immediate implementation of an original settlement agreement in which the district had promised a new behavior management plan, a medical evaluation and a behavioral consultant, where the student did not receive a FAPE; although the student was making satisfactory academic progress, his behavior in school and at home was inappropriate, falling far below the norms of the business and leisure society, including acts of self-stimulation, self-talk, emotional outbursts, lack of personal hygiene and an inability to socially interact within his community, at both school and home. G.C. ex rel. N.C. v. West Windsor-Plainsboro Bd. of Educ., OAL Dkt. No. EDS 8731-04, 2005 N.J. AGEN LEXIS 412, Final Decision (August 8, 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 nonpublic 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 Developmentally Disabled Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services;

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; and

19. A plan is in effect to establish stability in special education programming. The plan shall take into account the consistency of the location, curriculum, and staffing in the provision of special education services.

(c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through 19 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 U.S.C. §1400 et seq.) including, but not limited to, the number of students with disabilities who are:

- i. Exiting education;
- ii. Subject to suspensions and expulsions;
- iii. Removed to interim alternative education settings;
- iv. Participating in Statewide assessments;
- v. Postsecondary transition outcomes; and
- vi. Preschool outcomes.

(f) Upon request, reports in addition to those under (e) above shall be submitted to the Department of Education including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated and newly classified.

(g) The district board of education shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the district board of education, or LEA under Part B of the IDEA.

(h) Each district board of education shall ensure that a special education parent advisory group is in place in the district to provide input to the district on issues concerning students with disabilities.

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 the section.

Notice of readoption with technical change.

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

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

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

In (b)17, deleted "and" from the end; in (b)18, substituted "; and" for a period at the end; added (b)19; and in (c), substituted "19" for "14".

#### 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 requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Education 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).

#### 6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§1400 et seq.) and its implementing regulations at 34 CFR 300.1 et seq., which terms are incorporated by reference herein.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

"Adult student" means a person who has attained age 18, who is not under legal guardianship and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Approved private school for students with disabilities" corresponds to "approved private school for the handicapped" and means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

"Assistive technology device" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix F.

"Assistive technology service" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix G.

"Consent" means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

- 1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;
- 2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
- 3. Understands that the granting of consent is voluntary and may be revoked at any time; and



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

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

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

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

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

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

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

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

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

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

“Native language” means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine the language of the student.

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

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

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

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

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

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

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

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

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

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

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cutoff date by the district board of education. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided preschool services for the balance of that school year.

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of readoption with technical change.

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

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

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

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

Administrative correction.

See: 48 N.J.R. 205(a).

## Case Notes

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

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

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

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

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

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

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

## SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

### 6A:14-2.1 General requirements

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

(b) Upon request by a parent, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6A:14), student records rules (N.J.A.C. 6A:32), and/or low

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).

Grandmother who sought placement for her granddaughter at an alternative high school but could not articulate reasons why she felt the original placement was inappropriate was not entitled to relief; the grandmother claimed that her granddaughter's behavioral problems would be better in smaller groups, but she could provide no basis and no illustrative examples to support the conclusion. *R.L. ex rel. J.S. v. Passaic City Bd. of Educ.*, OAL Dkt. No. EDS 9573-06, 2006 N.J. AGEN LEXIS 809, Final Decision (October 5, 2006).

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 Child Protection and Permanency (DCP&P) in the Department of Children and Families 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 DCP&P 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.

Notice of readoption with technical change.

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

#### 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).

Natural parent of a child who was in the custody of the Division of Youth and Family Services did not retain the right to make educational decisions for the child; rather, the resource family reserved the right to address the special education matters pending before the Office of

Administrative Law (OAL) unless he or she so declined, at which time the appointed surrogate would then be empowered to address the pending matters before the OAL. *S.S. ex rel. K.S. v. Lawnside Borough Bd. of Educ.*, OAL DKT. EDS 6093-07 and EDS 6094-07, 2007 N.J. AGEN LEXIS 776, Final Decision (October 15, 2007).

#### 6A:14-2.3 Parental consent, notice, participation, and meetings

(a) Consent shall be obtained:

1. Prior to conducting any assessment as part of an initial evaluation;

2. Prior to implementation of the initial IEP resulting from (a)1 above;

3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond;

4. Prior to the release of student records according to N.J.A.C. 6A:32;

5. Each time a district board of education seeks to access private insurance covering a student with a disability;

6. Prior to the first time a district board of education seeks to access a child's or parent's public benefits or insurance covering a student with a disability in accordance with 34 CFR 154(d);

7. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;

8. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and

9. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).

(b) For a ward of the State, a district board of education must make reasonable efforts to obtain parental consent for an initial evaluation. If, after reasonable efforts, the parent cannot be found, or parental rights have been terminated, or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed, parental consent need not be obtained for an initial evaluation.

(c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related



services to a student whose parents refused to provide consent for implementation of the initial IEP. For those areas set forth in (a)1, 3 and 4 above, if a parent refuses to provide consent and the district and the parent have not agreed to other action, the district may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

(d) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.

(e) Written consent may be revoked by the parent, in writing, at any time.

1. Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.

2. If consent for special education and related services is revoked by the parent, the district board of education shall not file for a due process hearing or otherwise institute any legal proceeding seeking to overturn the parent's determination.

3. When a parent revokes consent for special education and related services, the school district shall provide written notice to the parent within 10 days of receipt of the written revocation of consent. The school district shall cease providing special education and related services to the student after the expiration of the 15-calendar-day notice period unless the parent rescinds the revocation of consent, in writing, within that time period.

4. If a parent revokes consent for special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents revoked consent for implementation of services.

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

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

2. Declines to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.

(g) Written notice shall be in language understandable to the general public, and shall be provided in the native lan-

guage of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

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

2. An explanation of why it is taking such action;

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

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

5. A description of any other factors that are relevant to the proposal or refusal by the district board of education;

6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and

7. In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:

- i. Upon referral for an initial evaluation;

- ii. Upon request by a parent;

- iii. When a request for a due process hearing is submitted to the Department of Education;

- iv. When a request for a complaint investigation is submitted to the Department; and

- v. When a student is removed for disciplinary reasons and the removal constitutes a change in placement as described in N.J.A.C. 6A:14-2.8.

(h) Written notice according to (g) above shall be provided to the parent as follows:

1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;

2. The district board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;

3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:

i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or

ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).

4. The district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the school district determine that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:

i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (g) above. Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.

ii. During the pendency of mediation or due process related to the disciplinary action the student shall be placed in accordance with 20 U.S.C. §1415(k) and N.J.A.C. 6A:14-2.8.

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding school holidays but not summer vacation.

i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination made within 20 calendar days, excluding school holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.

(i) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (g) above, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14), and due process hearing rules (N.J.A.C. 1:6A).

(j) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student.

(k) Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for

notice of a meeting according to (g)7ii above and (k)3 through 5 below are met.

1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:

i. The parent;

ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;

iii. The student, where appropriate;

iv. At least one child study team member who participated in the evaluation;

v. The case manager;

vi. Other appropriate individuals at the discretion of the parent or school district; and

vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the school principal or designee if they choose to participate.

2. Meetings of the IEP team shall include the following participants:

i. The parent;

ii. Not less than one general education teacher of the student, if the student is or may be participating in the general education classroom;

(1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;

(2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;

(3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and

(4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;

iii. Not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student;

(1) If there is no special education teacher or special education provider of the student, a special

education teacher or provider who is knowledgeable about the district's programs shall participate;

iv. At least one child study team member who can interpret the instructional implications of evaluation results;

v. The case manager;

vi. A representative of the responsible district who:

(1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;

(2) Is knowledgeable about the general education curriculum;

(3) Is knowledgeable about the availability of resources of the district board of education; and

(4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;

vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;

(1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;

viii. The student where appropriate;

ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and

x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.

3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.

4. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent(s) shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.

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

i. The notice of an IEP meeting shall inform the parents of the provisions in (k)2vii and (k)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.

ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:

(1) A purpose of the meeting will be the development of the transition services of the student; and

(2) The school district will invite the student;

iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:

(1) Indicate that a purpose of the meeting is the consideration of transition services for the student;

(2) Indicate that the school will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.

7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including, but not limited to:

i. Detailed records of telephone calls made or attempted and the results of those calls;

ii. Copies of correspondence sent to the parents and any responses received; and

iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.

9. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.

i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

10. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.

i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.

ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

(l) The following activities shall not be considered a meeting that requires parental participation:

1. Informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and

2. Preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.

1. An adult student shall be given notice and shall participate in meetings according to (a) through (k) above. The district board of education or the adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the adult student.

2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for release of records of an adult student shall be obtained from the adult student.

3. The district board of education shall provide any notice required under this chapter to the adult student and the parent.

4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.

(n) The New Jersey Department of Education shall disseminate the procedural safeguards statement to parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies.

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

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

In (f)5, added “, excluding school holidays, but not summer vacation” at the end.

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 (l).

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.

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

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

Section was “Parental consent, notice, participation and meetings”. Added new (a)6; recodified former (a)6 through (a)8 as (a)7 through (a)9; in (g)7ii, deleted “and” from the end; in (g)7iii, substituted a semicolon for a period at the end; and added (g)7iv and (g)7v.

#### 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).



Though the notice given by a school district to the parent of an autistic child was inadequate under federal law and related state law including N.J.A.C. 6A:14-2.3(f)1 and that notice thus constituted a procedural violation of the governing law, the evidence did not show that the requisite prejudice or harm resulted from the deficient notice as required by 20 U.S.C.S. § 1415(f)(3)(E)(ii), nor did the procedurally defective notice "significantly impede" the parent's opportunity to participate in the decision-making process relative to the child's Individual Educational Plan. Moreover, while the action of the district in unilaterally altering the wording of goals and objectives in the November 2012 IEP, along with the additional of related services, constituted a procedural violation because the parent was not provided with a copy of the amended IEP as required by N.J.A.C. 6A:14-3.7(d), neither the amendment of the IEP nor the implementation of the amended IEP rose to the level of denying a free appropriate public education to the child. S.S. ex rel. N.S. v. Brick Twp. Bd. of Educ., OAL DKT. NO. EDS 10871-13, AGENCY DKT. NO. 2013 19890, 2014 N.J. AGEN LEXIS 449, Final Decision (July 29, 2014).

Though a school district violated the rights of the parents of a child who met the criteria for classification as learning-disabled within the meaning of N.J.A.C. 6A:14-3.5(c) by failing to provide them with a draft Individualized Education Plan (IEP) for the child in a timely and appropriate manner and the district should have begun providing appropriate special education services to the child earlier than such services actually were provided, those inadequacies were not such that it could be said that the child had been denied a free, appropriate public education (FAPE) within the meaning of N.J.A.C. 6A:14-2.7(k). Moreover, while the district did not establish that the parents, by refusing to consent to the initial IEP, in effect prevented the district from providing a FAPE by reason of N.J.A.C. 6A:14-3.7(a) and N.J.A.C. 6A:14-2.3(c), there was a similar lack of evidence supporting the parents' claim that they were entitled to be reimbursed for the cost incurred by the parents in placing the child in an out-of-district summer program. K.O. and A.O. ex rel. J.O. v. North Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 09449-12, 2013 N.J. AGEN LEXIS 216, Final Decision (August 21, 2013).

Any procedural violations in developing a student's IEP did not necessarily result in the deprivation of a FAPE where the record reflected that the parents attended all IEP meetings, were given opportunities to input their own suggestions, were given the opportunity to present their own experts' reports, received constant and consistent feedback about the child's progress, and were offered individualized parent training at their home. O.P. ex rel. L.P. v. Rutherford Bd. of Educ., OAL Dkt. No. EDS 7426-09, 2010 N.J. AGEN LEXIS 415, Final Decision (August 18, 2010).

Parents' opportunity to participate in the decision-making process was significantly impeded where the district did not comply with the regulations pertaining to parental involvement in IEP preparation. The new IEP had no input from anyone but the case manager, who failed to consult with any members of the IEP team in developing the draft document. J.S. ex rel. J.S. v. Passaic City Bd. of Educ., OAL Dkt. No. EDS 7551-09 and EDS11276-09 (Consolidated), 2010 N.J. AGEN LEXIS 169, Final Decision (April 19, 2010).

Although parents may not have timely requested mediation or due process within the time limits set forth in N.J.A.C. 6A:14-2.3, the failure to strictly comply with the regulation did not necessarily preclude parents and children from receiving its "stay put" protection, especially where the parents never signed the IEP, advised the district that they were not comfortable with the placement, and expressed a desire to seek another placement. The district was, therefore, on notice of the parents' disagreement with the placement. C.T. ex rel. J.H. v. Magnolia Boro Bd. of Educ., OAL Dkt. No. EDS 8945-09, 2009 N.J. AGEN LEXIS 623, Emergent Relief Decision (September 11, 2009).

Mother was entitled to emergent relief where the school board failed to provide the mother notice that she had 15 days to file a request for mediation; more specifically, the board failed to prove that it provided the mother with the notice in the Individualized Education Program (IEP), which would have been sufficient. In addition, the board failed to consider the fact that the student was the victim of a serious bullying

incident, which was sexual in nature, when it formulated the IEP, and also failed to consider that the increase in the amount of time outside of the class would exacerbate the student's sense of isolation, resulting in an incomplete IEP and the possibility of irreparable harm. D.R. ex rel. J.R. v. Glen Rock Bd. of Educ., OAL Dkt. No. EDS 09728-09, 2009 N.J. AGEN LEXIS 587, Emergent Relief Order (September 3, 2009).

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 services 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).

N.J.A.C. 6A:14-2.3(f)(i) applied where there was no written notice and no final IEP provided to parents of a learning disabled child pursuant to N.J.A.C. 6A:14-2.3(f) to trigger the 15-day provision, and where the family had been advised at a previous IEP team meeting that the district was seeking Department of Education approval for an out-of-district placement. M.L. ex rel. R.H. v. Beverly City Bd. of Educ., OAL DKT. EDS 6657-07, 2007 N.J. AGEN LEXIS 622, Final Decision (September 7, 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).

Because parents of an 18-year-old emotionally disturbed child did not object to the IEP within 15 days, they were not automatically entitled to a "stay put" order maintaining their daughter's out of district educational placement; instead, the daughter could only remain in her out-of-district placement upon agreement of the parties or upon the parents demonstrating that they were entitled to emergent relief. C.W. ex rel. B.W. v. Willingboro Twp. Bd. of Educ., OAL DKT. EDS 6635-06, 2006 N.J. AGEN LEXIS 837, Final Decision (September 20, 2006).

IEP sent to parents of a learning disabled student met the notice requirements contained in N.J.A.C. 6A:14-2.3(e) because it carefully and clearly explained all of the provisions required by the regulation. There was no legal requirement that the district provide the information in a separate notice, especially where the last page of the IEP clearly explained to the parents that they needed to file due process or mediation

to stop the implementation of the IEP. T.B. ex rel. T.B. v. Clearview Reg'l Bd. of Educ., OAL DKT. EDS 6499-06, 2006 N.J. AGEN LEXIS 806, Final Decision (September 14, 2006).

N.J.A.C. 6A:14-2.3(f)3i was inapplicable where the district sent the parents a revised IEP, not an attempt by the district to resolve the dispute regarding placement, but simply to amend the IEP to address the goals and objectives added by the placement. T.B. ex rel. T.B. v. Clearview Reg'l Bd. of Educ., OAL DKT. EDS 6499-06, 2006 N.J. AGEN LEXIS 806, Final Decision (September 14, 2006).

School district was ordered to release student records even after the parent withheld her consent to the release of such records; placement of a 15-year-old in an out-of-district educational facility had to be effectuated if the student was to receive a FAPE but no potential out-of-district school would consider accepting him as a student without first having an opportunity to review his student records. Asbury Park Bd. of Educ. v. M.J. ex rel. S.J., OAL DKT. EDS 6265-06, 2006 N.J. AGEN LEXIS 743, Final Decision (August 31, 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. Bridge-water-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, 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).

#### 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 mini-

ment 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) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

1. 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)2 and 3 below. In addition, 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.

2. 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.

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

4. 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.

5. 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.

6. 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.

7. 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 liii 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)lii and (b)6; rewrote (c).

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

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

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).

Pursuant to the clear dictates of federal regulations and the Federal Office of Special Education Programs' unequivocal direction, the parent on behalf of her child was entitled to independent evaluations for special education services at the school district's expense as a matter of law under N.J.A.C. 6A:14-2.5(c)lii, iii. The provisions of N.J.A.C. 6A:14-3.3 do not, and cannot, be read to suggest that a child cannot be evaluated for special education services unless all general education interventions have failed. N.J.A.C. 6A:16-8.1 clearly envisions general education intervention that supplements, and certainly does not preclude, special education services. N.S. ex rel W.S. v. Newark Bd. of Educ., OAL DKT. NO. EDS 08229-14, 2014 N.J. AGEN LEXIS 734, Initial Decision (November 19, 2014).

School district demonstrated that it was entitled to emergent relief within the meaning of N.J.A.C. 6A:14-2.7(s) on its claim that the parents of a high school student who was on home instruction due to his conduct in having assaulted another student were required to make the student available for a neuropsychological examination and permitting the district to send the student's records to potential out-of-district



placements in the event that such placement was warranted if and when the student's classification for special education services changed. The district established the potential for irreparable harm if relief was not granted because it would be unable to satisfy its obligations to provide an appropriate program for the student under the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq., given the recommendations of the consulting psychiatrist that the student needed a small, closely-monitored program with a strong therapeutic component for the student. Moreover, the district demonstrated that the legal right to the underlying claim is well-settled and that the district had a reasonable probability of success on the merits because the district, in order to determine the services needed to confer a Free Appropriate Public Education on the student, was obligated by N.J.A.C. 6A:14-2.5(a)3, to assess the student in all areas of suspected disability. *Hanover Park Reg'l High Sch. Bd. of Educ. v. F.S. ex rel S.S.*, OAL Dkt. No. EDS 09804-14, AGENCY DKT. NO. 2015 21546 E, 2014 N.J. AGEN LEXIS 465, Ruling on Emergent Relief (August 12, 2014).

Guardian prevailed on a petition challenging a school district's compliance with applicable state and federal law with respect to the educational needs of a minor who was diagnosed with an autism spectrum disorder (ASD). The district failed to carry its burden to establish, by a preponderance of the evidence, that the placement of the child would provide a meaningful educational benefit because its sole witness on this issue, the child's case manager, did not establish that the district had complied with all of the procedural requirements, that the child had been assessed in all areas of suspected disability in accord with N.J.A.C. 6A:14-3.1(a) and N.J.A.C. 6A:14-2.5(b); and that the district had based its placement decision on a proper IEP as required by N.J.A.C. 6A:14-3.7. Specifically, the district was required to determine what, if any, additional data was needed to determine the present levels of academic achievement and functional performance and educational and related developmental needs of the student and how they should appropriately be addressed in the student's IEP in accord with N.J.A.C. 6A:14-3.8(b)2ii-iii. *R.M. ex rel. T.S. v. Matawan-Aberdeen Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 11443-12, AGENCY Dkt. No. 2013 18732, 2014 N.J. AGEN LEXIS 202, Final Decision (April 28, 2014).

An Administrative Law Judge (ALJ) concluded that there was no merit to a claim by the parents of a disabled student that the school district had violated their son's rights when it did not undertake a full triennial evaluation and opted to only obtain a speech evaluation. The record established that the parents in fact waived the triennial evaluation. Given the waiver, N.J.A.C. 6A:14-3.8 did not require the district to provide a full evaluation. Nor did the district violate the rights of the parents or the student by refusing to utilize a specific evaluator because the regulations, including N.J.A.C. 6A:14-2.5(a)1, merely required districts to use a variety of assessment tools and strategies to gather relevant functional and development information, which tools were to be administered by trained and knowledgeable personnel in accord with the instructions. Moreover, because N.J.A.C. 6A:14-3.4(f)4 permitted but did not require a district to administer a technology evaluation, the parents' claims to the contrary lacked merit. Finally, in a similar vein, while N.J.A.C. 6A:14-3.7(c)1 provided for parental input into an individualized education plan, the district was not required to acquiesce to all of the requests contained therein, and the parents' claim that the district's failure to do so afforded grounds for relief was rejected. *T.W. and L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ.*, OAL Dkt. No. EDS 12854-12, AGENCY REF. No. 2013-18770, 2014 N.J. AGEN LEXIS 80, Final Decision (February 4, 2014).

Neuropsychological assessment was not suggested or recommended for a student's reevaluation because the parents and the district agreed, based on the student's classification category of specific learning disability in the area of reading fluency, that the educational, psychological, speech-language and quantitative reading inventory assessments were the only testing areas needed. Because the district did not conduct a neuropsychological evaluation, there was no evaluation with which the parents could disagree; therefore, there was no obligation for the district to reimburse the parents for an independent neuropsychological evaluation. *North Brunswick Twp. Bd. of Educ. v. R.M. ex rel. N.M.*, OAL Dkt. No. EDS 03145-10, 2010 N.J. AGEN LEXIS 368, Final Decision (July 27, 2010).

School district properly denied a parent's request for an independent evaluation of her son where the initial evaluation done by the district's optometrist was appropriate. *Millville Bd. of Educ. v. R.A. ex rel. E.L.*, OAL Dkt. No. EDS 4995-09, 2009 N.J. AGEN LEXIS 507, Final Decision (July 10, 2009).

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).

Parents of a emotionally disturbed six-year-old student were not entitled to independent evaluations where the school district proved that the current evaluations for speech and language, education (learning), and psychology were complete and appropriate. Since there were no current psychiatric and occupational evaluations conducted by the district, there was no district evaluation with which the parents could disagree and, therefore, there was no obligation for the district to perform independent psychiatric and occupational evaluations at public expense. *Lawrence Twp. Bd. of Educ. v. M.S. ex rel. E.S.*, OAL DKT. EDS 595-07, 2007 N.J. AGEN LEXIS 379, Final Decision (June 20, 2007).

Board of Education was not required to conduct an independent evaluation of a learning disabled student where it provided testimony and documentary evidence that the evaluations it had performed on the student were valid and the parents provided no testimony or other relevant evidence to rebut such evidence. *Washington Twp. Bd. of Educ. v. J.T. ex rel. M.T.*, OAL DKT. EDS 677-07, 2007 N.J. AGEN LEXIS 283, Final Decision (May 14, 2007).

When a parent disagreed with a school district's evaluation of a student, the parent was entitled to request an independent evaluation and the district was obligated to provide a list from which the parent could choose an evaluator. *Wall Twp. Bd. of Educ. v. C.M. ex rel. D.M.*, OAL DKT. EDS 6450-06, 2007 N.J. AGEN LEXIS 254, Final Decision (May 9, 2007).

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).

Parent of a disabled child was entitled to an independent evaluation of her son's need for assistive technology in the form of computer programs because, to the extent the child study team and the student's regular teacher determined he was not in need of assistive technology, that was an "evaluation" and the parent was entitled to an evaluation in the same related service area at Board expense. *D.T. ex rel. A.T. v. Rockaway Twp. Bd. of Educ.*, OAL DKT. EDS 7593-05, 2005 N.J. AGEN LEXIS 485, Final Decision (September 6, 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.

Parents were granted emergent relief and their son would be returned to his placement in the school district's general education program. Nothing in the record showed that the district obtained final consent from the parents for the proposed placement changes for child as required by N.J.A.C. 6A:14-2.6(d)10 and N.J.A.C. 6A:14-2.7(u). *S.K. and P.K. ex rel. M.K., Voorhees Twp. Bd. of Educ.*, OAK Dkt. No. EDS 16383-13, AGENCY Dkt. No. 2014 201490E, 2013 N.J. AGEN LEXIS 297, Decision on Emergent Relief (Nov. 26, 2013).

School district's agreement to reimburse the parent of a disabled child who was eligible for special education services for tuition paid by the parent by reason of the child's placement in an independent school, which placement was undertaken unilaterally by the parent, did not resolve any issue regarding the child's right to attend an extended school year (ESY) program sponsored by that school. Not only did the agreement not establish a placement that was entitled to protection under the state's "stay put" provisions in N.J.A.C. 6A:14-2.6(d)10 and N.J.A.C. 6A:14-2.7(u), but the agreement expressly disclaimed any suggestion that the district had "agreed" to the unilateral placement. Because treatment of the unilateral placement as a placement that was entitled to "stay put" protection was the basis for the parent's application for an emergency order, the parent's application did not satisfy the criteria for such relief in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1. *K.L. ex rel. R.L. v. Berlin Bd. of Educ.*, OAL Dkt. No. EDS

8529-2013, Agency Dkt. No. 2013-19893, 2013 N.J. AGEN LEXIS 184, Initial Decision (July 2, 2013).

"Stay put" provision acted as an automatic statutory injunction against a district's effort to cease providing five hours a week of individualized services from an educational consulting program for a 19-year-old disabled student, as set forth in his IEP. O.U. ex rel. S.U. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 578-09, 2009 N.J. AGEN LEXIS 78, Emergency Relief Decision (March 9, 2009).

In a dispute between two municipalities within a county over the amount of tuition and credits that were owed between the municipalities over multiple school years, the municipalities could not expect a dispositive ruling from the County Superintendent after they submitted the disputes to mediation and mediation proved to be unsuccessful. Bd. of Educ. of the Borough of Mountainside, Union Cnty. v. Bd. of Educ. of the Twp. of Berkley Heights, Union Cnty., OAL Dkt. NO. EDU 9700-06, 2008 N.J. AGEN LEXIS 1504, Final Decision (January 17, 2008).

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).

Parents of an autistic middle school aged child were ordered to participate in a resolution session prior to receiving a plenary hearing regarding their child's placement and IEP where the special education rules encouraged settlement and provided for mediation pursuant to N.J.A.C. 6A:14-2.6. G.K. ex rel. A.K. v. Northern Burlington County Regional Bd. of Educ., OAL DKT. EDS 6736-07, 2007 N.J. AGEN LEXIS 649, Final Decision (September 7, 2007).

Claim that aide at residential facility was educationally necessary was not the same as issue decided in first hearing concerning validity of settlement agreement; res judicata did not bar educational necessity claim. D.R. by M.R. v. East Brunswick Bd. of Educ., D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145.

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

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

Competition in track meets was not available to handicapped student without required certificate. C.W. v. Southern Gloucester Board, 95 N.J.A.R.2d (EDS) 155.

Residential school's requirement that one-to-one aide be provided handicapped student for student to remain in program did not entitle parents to reopen settlement agreement. D.R. v. East Brunswick Board of Education, 93 N.J.A.R.2d (EDS) 31.

Implementation ordered of Stipulation of Settlement providing for mainstreaming of emotionally handicapped student at public high school. J.J. v. Atlantic City Board of Education, 92 N.J.A.R.2d (EDS) 251.

## 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 place-

ment, 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.

9. The parties may agree in writing to waive the resolution meeting and proceed directly to a hearing.

i. Parents may indicate on the request for a hearing that they desire to waive the resolution meeting.

ii. If the parent and a representative of the district with decision-making authority agree in writing to waive the resolution meeting, the parties shall notify the Office of Special Education Programs that they have agreed to waive the resolution meeting.

iii. Upon receipt of a signed waiver, the matter will be transmitted to the Office of Administrative Law for a hearing.

10. The parties shall notify the Office of Special Education Programs, in writing, of the result of the resolution meeting. If the matter has not been resolved or withdrawn, it shall be transmitted to the office of administrative law after 30 days from the date the request was received.

11. When a district board of education files a request for a due process hearing, no resolution meeting shall be held. The matter shall be mediated if the parties agree and, if necessary, transmitted to the Office of Administrative Law for a due process hearing.

(i) After a petition requesting a due process hearing is submitted to the Office of Special Education Programs, it may only be amended with the consent of the other party, or if an administrative law judge allows the party to amend the petition.

1. If a petition is amended with the consent of a district board of education, the district shall be afforded the opportunity to hold a resolution meeting in accordance with (h) above in order to resolve the issues raised in the amended petition. The timeframes for holding and completing the resolution meeting shall begin on the date the amended petition is filed with the Office of Special Education Programs.

2. If a petition is amended by order of an administrative law judge, such order shall be issued no later than five days prior to the date the matter is heard, and no resolution meeting is required to address the issues raised in the amended petition.

(j) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the conclusion of the resolution period described in (h)2, 4 and 5 above unless specific adjournments are granted by the administrative law judge in response to requests by either party to the dispute.

1. The 15- or 30-day resolution period set forth in (h)2, 4 and 5 above shall end either at the expiration of the applicable 15- or 30-day time period, or when both parties notify the Office of Special Education Programs, in writing, that they have waived the resolution meeting and intend to proceed directly to a due process hearing.

(k) The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters, alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded the child's right to a FAPE;

2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or

3. Caused a deprivation of educational benefits.

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

1. The decision in a due process hearing shall be provided in an electronic form if the parent requests that it be issued in an electronic form.

(m) If the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq., the parent may request an expedited hearing.

(n) To remove a student with a disability when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days according to 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.;

1. The procedure in 20 U.S.C. §1415(k)(3) may be repeated as necessary.

(o) An expedited hearing shall be requested according to the following:

1. The request for a due process hearing shall specify that an expedited hearing is requested due to disciplinary action;

2. When a request for an expedited hearing is received, the Office of Special Education Programs shall acknowledge receipt of the request, shall provide information to the parent regarding free and low cost legal services, shall provide mediation if requested by both parties in lieu of a resolution meeting and shall transmit the case to the Office of Administrative Law according to the following:

i. A representative from the Office of Special Education Programs shall telephone the clerk of the Office of Administrative Law who will provide a hearing date;

ii. The expedited hearing shall be conducted and completed within 20 school days of receipt of the request by the Office of Special Education Programs;

iii. The resolution meeting or, if requested by both parties, mediation shall be scheduled within seven days and completed within 15 days;

iv. If the mediation results in agreement, the conclusions of the parties shall be incorporated into a written agreement prepared by the mediator at the mediation conference and signed by each party. The matter shall be considered settled. The agreement shall be binding according to N.J.A.C. 6A:14-2.6(d)11;

3. Upon receiving the acknowledgment of the request from the Office of Special Education Programs, the parties shall complete the exchange of relevant records and information at least two business days before the hearing; and

4. The expedited hearing shall result in a written decision being provided to the parties within 10 school days of the completion of the due process hearing without exceptions or extensions.

(p) In reviewing a decision with respect to a manifestation determination, the administrative law judge shall determine whether the district board of education has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.

(q) In reviewing a decision under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq. to place the student in an interim alternative educational setting, the administrative law judge shall apply the standards in 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.

(r) Either party may apply in writing for a temporary order of emergent relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergent relief shall note that a copy was sent to the other party.

1. Emergent relief shall only be requested for the following issues:

i. Issues involving a break in the delivery of services;

ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;

iii. Issues concerning placement pending the outcome of due process proceedings; and

iv. Issues involving graduation or participation in graduation ceremonies.

(s) Prior to transmittal of a request for a due process hearing or an expedited hearing to the Office of Administrative Law, an application for emergent relief shall be made to the State Director of the Office of Special Education Programs. After transmittal of a request for a due process hearing or an expedited hearing, any application for emergent relief shall be made directly to the Office of Administrative Law.

1. Emergent relief may be requested according to N.J.A.C. 1:6A-12.1. Emergent relief may be granted if the administrative law judge determines from the proofs that:

i. The petitioner will suffer irreparable harm if the requested relief is not granted;

ii. The legal right underlying the petitioner's claim is settled;

iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(t) If either party fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction. If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law with respect to the student's program or services, a request for enforcement may be made by the parent or the parent's attorney on behalf of the student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of

Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred. The request shall include a copy of the decision issued by the Office of Administrative Law. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur. Upon receipt of this request, the district board of education shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent. The Office of Special Education Programs shall determine the implementation of the decision. If it is determined that the district has failed to implement the decision or part of the decision, the Office of Special Education Programs shall order the district to implement the decision or part of the decision, as appropriate. If any part of the decision is modified by subsequent agreement 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 "reevaluation", 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.

Notice of readoption with technical change.

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

#### 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).

Emergent relief was denied to the parents of an 11 year old boy who was removed from his 5th grade general education school placement where he was also receiving speech-language services per an IEP after the student brought two knives to school and displayed them to other students, which removal occurred after the school district determined that his conduct in bringing the knives to school was not a manifestation of his disability. Not only were the underlying merits of the removal petition not properly considered on an emergent basis given the determination that the conduct was not a manifestation of the student's disability, but the prerequisites for emergent relief in the form of an order requiring him to be returned to his last-agreed upon placement, receiving speech-language services, were not met. While there technically was no break in educational services within the meaning of N.J.A.C. 6A:14-2.7(r), it was undisputed that there has been a diminished educational benefit where, as here, the student was receiving only 2 hours of educational enrichment daily. Nonetheless, the district had a compelling interest in ensuring the safety of the student body and of the student himself. Because the district's sole condition was that the student submit to a psychiatric evaluation that cleared him to return to school, there cannot legitimately be irreparable harm present, and the absence of irreparable harm meant that the criteria for emergent relief in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s) had not been met. *J.W. and P.W. ex rel. M.W. v. North Brunswick Twp. Bd. of Educ.*, OAL DKT. NO. EDS 8938-14, AGENCY DKT. NO. 2014 21363, 2014 N.J. AGEN LEXIS 490, Decision on Request for Emergent Relief (August 15, 2014).

School district demonstrated that it was entitled to emergent relief within the meaning of N.J.A.C. 6A:14-2.7(s) on its claim that the parents of a high school student who was on home instruction due to his conduct in having assaulted another student were required to make the student available for a neuropsychological examination and permitting the district to send the student's records to potential out-of-district placements in the event that such placement was warranted if and when the student's classification for special education services changed. The district established the potential for irreparable harm if relief was not granted because it would be unable to satisfy its obligations to provide an appropriate program for the student under the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400 et seq., given the recommendations of the consulting psychiatrist that the student needed a small, closely-monitored program with a strong therapeutic component for the student. Moreover, the district demonstrated that the legal right to the underlying claim is well-settled and that the district had a reasonable probability of success on the merits because the district, in order to determine the services needed to confer a Free Appropriate Public Education on the student, was obligated by N.J.A.C. 6A:14-2.5(a)3, to assess the student in all areas of suspected disability. *Hanover Park Reg'l High Sch. Bd. of Educ. v. F.S. ex rel S.S.*, OAL DKT. NO. EDS 09804-14, AGENCY DKT. NO. 2015 21546 E, 2014 N.J. AGEN LEXIS 465, Ruling on Emergent Relief (August 12, 2014).

A disabled minor was not entitled to an out-of-district placement despite claims that he was being bullied, that teachers yelled at him and that he was subjected to name calling. The absence of a severe clinical diagnosis, such as a social or emotional disorder, or any serious medical conditions meant that an out-of-district placement is not justified. To the extent that the minor's due process claim alleged procedural violations of federal laws guaranteeing a "free and appropriate education" (FAPE), those claims were meritless because the minor's absence from school was a result of his refusal to attend. Moreover, the district provided home instruction notwithstanding the fact that the district's investigation of the alleged "bullying" did not reveal conduct that met district criteria for the same. Moreover, to the extent that a substantive due process claim was being made, per N.J.A.C. 6A:14-2.7(k), the record supported the conclusion that the minor had received a FAPE because Individual Education Plans that met the standards in N.J.A.C. 6A:14-3.7(e)2 were adopted but could not be implemented due to a lack of cooperation on the part of the minor and his representative. *M.K. ex rel. J.P. v. Hawthorne Bd. of Educ.*, OAL DKT. NO. EDS 18538-13, AGENCY

DKT. NO. 2014/20536, 2014 N.J. AGEN LEXIS 450, Final Decision (July 30, 2014).

Request by a school district that a tribunal draw an adverse inference from the decision of a guardian of a minor who was diagnosed with an autism spectrum disorder to call a certain witness was inconsistent with prevailing law because the purpose of the adverse-inference rule in other settings was not present in special education matters. In a due process hearing, where the tribunal is tasked with identifying a child's deficits and needs and then evaluating how a district's proposed programs, classes and accommodations are designed to meet those needs, any inference, either positive or negative, may render the decision arbitrary and, more importantly, heightens the risk that the child is placed in an inappropriate educational setting contrary to the mandate of N.J.A.C. 6A:14-2.7(k). *R.M. ex rel. T.S. v. Matawan-Aberdeen Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 11443-12, AGENCY Dkt. No. 2013 18732, 2014 N.J. AGEN LEXIS 202, Final Decision (April 28, 2014).

An Administrative Law Judge (ALJ) concluded that all of the emergent relief criteria in N.J.A.C. 1:6A-12.1 and N.J.A.C. 6A:14-2.7(s) had been met by an application by the parent of a high school student for an order approving placement of the student, who was suffering from psychiatric problems, in an out-of-state residential treatment program. The school board agreed that a residential treatment program was called for but preferred that the student be placed in a program in New Jersey. However, the board was unable to identify a single facility in New Jersey that met all of the criteria of the student's treatment plan. Because the board could not identify an appropriate in-state placement and because the parties agreed that the out-of-state program in fact met those criteria, emergent relief was properly granted. *G.D. and G.D. ex rel. A.D. v. Brick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 2424-14, AGENCY Dkt. No. 2014 20804 E, 2014 N.J. AGEN LEXIS 45, Emergent Relief Decision (March 6, 2014).

Parents were granted emergent relief and their son would be returned to his placement in the school district's general education program. Nothing in the record showed that the district obtained final consent from the parents for the proposed placement changes for child as required by N.J.A.C. 6A:14-2.6(d)10 and N.J.A.C. 6A:14-2.7(u). *S.K. and P.K. ex rel. M.K., Voorhees Twp. Bd. of Educ.*, OAK Dkt. No. EDS 16383-13, AGENCY Dkt. No. 2014 201490E, 2013 N.J. AGEN LEXIS 297, Decision on Emergent Relief (Nov. 26, 2013).

When a school district failed to offer a free appropriate public education (FAPE) to a child and the Individualized Education Program (IEP) proposed by the district would not have conferred a meaningful educational benefit on the child, the parents were entitled to reimbursement for certain educational expenses incurred on the child's behalf. The failure by the District to timely and thoroughly evaluate the child, together with the child study team's failure to formally schedule an IEP meeting, effectively made it impossible for the parents to choose a public school program for their son. There could be no more readily apparent denial of FAPE under N.J.A.C. 6A:14-2.7(k). *K.B. and D.B. ex rel. L.B. v. the Morris School District, Morris Cnty.*, OAL Dkt. No. EDS 15435-12, AGENCY Dkt. No. 2013 18999, 2013 N.J. AGEN LEXIS 295, Final Decision (Nov. 15, 2013).

Parents were not entitled to an emergent order providing home instruction or out-of-district placement pending a due-process hearing pursuant to N.J.A.C. 6A:14-2.7(s)1. They did not identify any substantial flaw in the stay-put placement, and there was neither a pattern of abuse nor a clear and convincing showing that the student would suffer irreparable harm if he returned to the stay-put placement. In addition, the parents failed to demonstrate a likelihood of success on the merits of the underlying claim when they presented neither expert opinion nor conclusive data to show that the program and placement proposed by the School District did not offer a free appropriate public education. *D.S. and K.L. ex rel. M.S. v. Winslow Twp. Bd. of Educ.*, OAL Dkt. No. EDS 15481-13, AGENCY Dkt. No. 2014 20428, 2013 N.J. AGEN LEXIS 291, Decision on Emergent Relief (Nov. 1, 2013).

Parents were entitled to a "stay-put" order pending the outcome of a due-process petition to maintain and support their child's attendance at an out-of-district private school where he was unilaterally placed by his

parents. An administrative law judge's agreement with the parents' decision to unilaterally place the child in the private school made that school the child's "current educational placement" under N.J.A.C. 6A:14-2.7(u)1. *M.S. and H.S. ex rel. A.S. v. Harrison Twp., OAL Kt. No. EDS 14807-13, Agency Dkt. No. 2014 20401, 2013 N.J. AGEN LEXIS 286, Decision on Emergent Relief (Oct. 23, 2013).*

Though a school district violated the rights of the parents of a child who met the criteria for classification as learning-disabled within the meaning of N.J.A.C. 6A:14-3.5(c) by failing to provide them with a draft Individualized Education Plan (IEP) for the child in a timely and appropriate manner and the district should have begun providing appropriate special education services to the child earlier than such services actually were provided, those inadequacies were not such that it could be said that the child had been denied a free, appropriate public education (FAPE) within the meaning of N.J.A.C. 6A:14-2.7(k). Moreover, while the district did not establish that the parents, by refusing to consent to the initial IEP, in effect prevented the district from providing a FAPE by reason of N.J.A.C. 6A:14-3.7(a) and N.J.A.C. 6A:14-2.3(c), there was a similar lack of evidence supporting the parents' claim that they were entitled to be reimbursed for the cost incurred by the parents in placing the child in an out-of-district summer program. *K.O. and A.O. ex rel. J.O. v. North Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 09449-12, 2013 N.J. AGEN LEXIS 216, Final Decision (August 21, 2013).

Proper standard to be used when emergency relief per N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1 is sought in connection with a proposed change, by a school district, in the placement of a student under an agreed-upon Individualized Education Program (IEP) is that which is provided in the "stay put" provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400. Where a school board and the parents of the student had agreed on the placement of the student in a private program and the student in fact had been so placed, that placement was properly maintained under the "stay put" provisions of IDEA during the pendency of any litigation and notwithstanding any claim by a county office of education that the placement did not satisfy the so-called "Naples" requirements, and such placement was properly maintained until any issue regarding the program, whether raised under N.J.A.C. 6A:14-4.3(b)10 or N.J.A.C. 6A:14-6.5 or otherwise, was determined. *N.W. and R.W. ex rel. M.W., v. Lakewood Twp. Bd. of Educ.*, OAL Dkt. No. EDS 9524-13, AGENCY Dkt. No. 2014-200007, 2013 N.J. AGEN LEXIS 202, Final Decision on Motion for Emergent Relief (July 16, 2013).

The mother of an 11 year old child who had been the subject of a disciplinary removal from school in connection with the filing of a Harassment, Intimidation and Bullying (HIB) complaint was not entitled to emergency relief in the form of an order returning him to school. First, the mother's disagreement with the HIB allegations and substantiation was not ripe for adjudication by the issuance of emergency relief because there was an entirely separate appeal process that applied in HIB cases. Second, the mother did not make an adequate showing of the elements in N.J.A.C. 1:6A-12.1(a) and N.J.A.C. 6A:14-2.7(r). That is, the fact that school was no longer in session weighed heavily against an argument for irreparable harm since there was no danger that educational services being provided to the child would cease or be interrupted. Similarly, the mother failed to demonstrate a likelihood of success on the merits or that there is any legal basis to support her underlying claim. Finally, balancing the equities and interests of the parties, it was not shown that the child would suffer greater harm if emergent relief was denied. *V.E. and L.B. ex rel. P.B. v. Totowa Bd. of Educ.*, OAL DKT. NO. EDS 7823-14, AGENCY DKT. NO. 2014 21292, 2014 N.J. AGEN LEXIS, Decision on Emergent Relief (July 3, 2014).

School district's agreement to reimburse the parent of a disabled child who was eligible for special education services for tuition paid by the parent by reason of the child's placement in an independent school, which placement was undertaken unilaterally by the parent, did not resolve any issue regarding the child's right to attend an extended school year (ESY) program sponsored by that school. Not only did the agreement not establish a placement that was entitled to protection under the state's "stay put" provisions in N.J.A.C. 6A:14-2.6(d)10 and

N.J.A.C. 6A:14-2.7(u), but the agreement expressly disclaimed any suggestion that the district had “agreed” to the unilateral placement. Because treatment of the unilateral placement as a placement that was entitled to “stay put” protection was the basis for the parent’s application for an emergency order, the parent’s application did not satisfy the criteria for such relief in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1. K.L. ex rel. R.L. v. Berlin Bd. of Educ., OAL Dkt. No. EDS 8529-2013, Agency Dkt. No. 2013-19893, 2013 N.J. AGEN LEXIS 184, Initial Decision (July 2, 2013).

Parent of a disabled child was not entitled to emergency relief under N.J.A.C. 6A:14-2.7(s) to allow the child to attend her prom. Although the inability to attend the prom constituted irreparable harm because it was a once in a lifetime event, there was no demonstration that the school district’s policy was arbitrary with regard to a ban on participation in a prom or any other extra-curricular activity while there was home instruction or where the student was not been in school for at least four hours on the day of the event. The ban was completely consistent with the terms of the child’s Individualized Education Program to which the parent agreed and should not be viewed as punitive. Therefore, the parent did not demonstrate either a likelihood of prevailing on the merits of the underlying claim or that the legal right underlying her claim was settled. M.M. o/b/o M.M. v. Caldwell - West Caldwell Bd. of Educ., OAL Dkt. No. EDS 06605-13, 2013 N.J. AGEN LEXIS 111, Final Decision (May 16, 2013).

Parents were not entitled to emergent relief in the form of placement of their six-year-old Down Syndrome daughter in a neighborhood school because, while enrollment at the neighborhood school was definitely a consideration for placement, it was not dispositive, particularly where a program appropriate for the student was within her local area. While the underlying claim for a free and appropriate public education was well-settled, the right to one in the neighborhood school was not. M.R. ex rel. R.R. v. Medford Twp. Bd. of Educ., OAL Dkt. No. EDS 13530-10, 2010 N.J. AGEN LEXIS 657, Order Denying Emergent Relief (December 21, 2010).

Mother was not entitled to emergent relief in the form of a residential program for her moderately impaired high school student where the evidence demonstrated that the student’s concerning behaviors, which included ingesting potentially dangerous foods and materials, an inability to make good judgments, and engaging in dangerous activities, would be adequately addressed in a self-contained class in the regular high school. K.M. ex rel. R.M. v. Ramsey Bd. of Educ., OAL Dkt. No. EDS 08067-10, 2010 N.J. AGEN LEXIS 430, Order Denying Emergent Relief (August 12, 2010).

Parents of a six-year-old student who suffered from an inherited degenerative retinal disease were not entitled to emergent relief in the form of reimbursement for tuition and transportation because the parents’ contention that the district would not be ready to educate the student in accordance with the IEP, which provided for an in district program with specific modifications and accommodations, including a certified teacher of the blind and visually impaired, books and materials in Braille, and a Braille enriched environment, was merely speculative, especially where the district claimed that it had entered into a contract with the Commission for the Blind and Visually Impaired and would, in fact, be ready to provide the student with a FAPE in accordance with the agreed-upon IEP. S.N. ex rel. I.N. v. Washington Twp. Bd. of Educ., OAL Dkt. No. EDS 7992-10, 2010 N.J. AGEN LEXIS 416, Order Denying Emergent Relief (August 6, 2010).

Mother of a five-year-old student who was previously classified as “a preschool child with a disability” could not invoke the “stay put” provision where she failed to timely request a due process hearing within 15 days of the district’s issuance of the student’s IEP. Although the mother clearly stated her disagreement with the IEP declassifying her son and voiced that disagreement to officials, she had to preserve her rights to “stay put” by filing with the Office of Special Education Programs within the 15 days. M.H. ex rel. G.H. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 7215-10, 2010 N.J. AGEN LEXIS 324, Order Denying Emergent Relief (July 19, 2010).

Where a mother filed her due process claims on behalf of her disabled son on December 8, 2008, she was precluded from raising issues related to IEPs that were implemented more than two years prior because, pursuant to N.J.A.C. 6A:14-2.7(a)1, a request for a due process hearing had to have been filed within two years of the date the party knew or should have known about the alleged action that formed the basis for the due process petition. The mother provided no basis upon which the two-year limitation should have been relaxed. W.G. ex rel. M.P. v. Montclair Bd. of Educ., OAL Dkt. No. EDS 1520-09, 2010 N.J. AGEN LEXIS 353, Final Decision (June 30, 2010).

Under the “stay put” provision, a school district could not unilaterally suspend at-home parent training because of safety concerns or suspend at-home therapy services without first seeking agreement of the parents or making application for emergency relief or an order to terminate or modify the services. As such, the district was ordered to provide compensatory make-up sessions for at-home parent training and at-home speech therapy sessions that were missed during the period of time the stay-put provision was violated. J.W. ex rel. B.W. v. Tinton Falls Bd. of Educ., OAL Dkt. No. EDS 8125-09, 2010 N.J. AGEN LEXIS 458, Final Decision (June 28, 2010).

Although the district did not strictly comply with the requirements of an identification meeting under N.J.A.C. 6A:14-3.3(e) where it failed to have a regular or special education preschool teacher present, the procedural error did not significantly hamper the process at the pre-evaluation meeting because the district had the benefit of the parents’ input and the written input of the child’s teacher. A.P. ex rel. J.F.-P. v. Clifton Bd. of Educ., OAL Dkt. No. EDS 07554-09, 2010 N.J. AGEN LEXIS 302, Final Decision (June 25, 2010).

Nineteen-year-old student classified as eligible for special education and related services under the category of Traumatic Brain Injury was properly set to graduate where he had already completed five years of high in order to allow him to transition from college preparation classes to vocational classes, had earned the requisite credits to graduate, and there was no indication that a sixth year of high school would have been beneficial to him in any way. N.W. v. East Orange Bd. of Educ., OAL Dkt. No. EDS 6025-10, 2010 N.J. AGEN LEXIS 299, Order Denying Emergent Relief (June 16, 2010).

Mother was not entitled to emergent relief in the form of an injunction against the district to prevent the district from awarding her 19-year-old son a diploma because the student would not have suffered irreparable harm if he received a diploma, as he still had other causes of action in pursuing his due process case. Additionally, the legal right underlying his claim and the likelihood of prevailing on the merits could not have been determined without an evidentiary hearing, as material facts were



in dispute. *M.I. ex rel. F.I. v. Northern Burlington County Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 4702-10, 2010 N.J. AGEN LEXIS 455, Order Denying Emergent Relief (June 10, 2010).

Mother's application for emergent relief to allow her son to attend his senior prom was denied because failure to attend prom would not result in irreparable harm and the student had acquired the requisite number of disciplinary "points" to exclude him from all extracurricular activities. The Administrative Law Judge was not in a position to evaluate the merits of each of the points the student had acquired over the year. *K.B. ex rel. Q.B. v. Moorestown Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4416-10, 2010 N.J. AGEN LEXIS 244, Order Denying Emergent Relief (May 14, 2010).

"Stay put" provision was meant to preserve the status quo and, by definition, there was no viable, independent cause of action for "stay put" solely based on a due process petition seeking "stay put." Rather, it was a derivative cause of action applicable only when the placement of a child was challenged. *C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ.*, OAL Dkt. No. EDS 50-10, 2010 N.J. AGEN LEXIS 147, Final Decision (April 14, 2010).

Parents' application for emergent relief in the form of locating an appropriate therapeutic day school for their 14-year-old emotionally fragile child was denied because the stay-put provision of the IDEA required the continuation of the program set forth in the IEP until the underlying issues of placement could be determined consistent with the provision of a free appropriate public education at the conclusion of the plenary proceeding. *R.S. ex rel. A.S. v. Fairlawn Bd. of Educ.*, OAL Dkt. No. EDS 03224-10, 2010 N.J. AGEN LEXIS 547, Order Denying Emergent Relief (March 25, 2010).

Mother of a multiply disabled student was not entitled to emergent relief in the form of a residential program for the student because the functional behavioral analysis submitted in support of her application did not include a specific recommendation for a residential program or an expert's opinion or report on the issue; it was impossible to make determinations, based upon the mother's submissions, that the existing IEP was inadequate or that the IEP needed to be revised to provide for a residential program. *S.B. ex rel. J.B. v. Hanover Park Reg'l High School District Bd. of Educ.*, OAL Dkt. No. EDS 01696-10, 2010 N.J. AGEN LEXIS 126, Order Denying Emergent Relief (March 1, 2010).

Where a multiply disabled student was not attending the morning portion of his program and had been placed in a youth detention facility, there was a "break in the delivery of services" for purposes of N.J.A.C. 6A:14-2.7(r) and the school district's claim that the mother's application for emergent relief should have been dismissed because it failed to request relief consistent with the rule was without merit. *S.B. ex rel. J.B. v. Hanover Park Reg'l High School District Bd. of Educ.*, OAL Dkt. No. EDS 01696-10, 2010 N.J. AGEN LEXIS 126, Order Denying Emergent Relief (March 1, 2010).

Petitioners were not entitled to the prior "stay put" because they entered into a subsequent Settlement Agreement, which terminated and superseded their right to the 2008-2009 "stay put" IEP; additionally, petitioners were not entitled to the temporary program and placement set forth in the Settlement Agreement, which was explicitly stated to terminate effective October 30, 2009. *C.T. ex rel. J.H. v. Cherry Hill Twp. Bd. of Educ.*, OAL Dkt. No. EDS 10598-09, 2009 N.J. AGEN LEXIS 770, Emergent Relief Decision (November 9, 2009).

For purposes of the "stay put" provision, where the last agreed upon IEP included a pull-out replacement resource program combined with the general education classroom program, the location of the program within the school district was within the discretion of the school district, and the transfer of the comparable program from one school to another was not a change in educational placement. *East Windsor Bd. of Educ. v. E.B. ex rel. D.B.*, OAL Dkt. No. EDS 10370-09, 2009 N.J. AGEN LEXIS 769, Emergent Relief Decision (October 26, 2009).

Petitioners were entitled to a "stay put" order where nothing in the record showed that the district obtained final consent from the parent for their proposed placement changes for the student, nor did the record

show that they invoked the IEP process as set forth in statute or regulations to implement their proposed changes; while the district may have been attempting in good faith to work with the parent and resolve the placement issue, it did not appear that it took the necessary steps to validate the changes it was attempting to implement. *J.M. ex rel. P.M. v. Robbinsville Bd. of Educ.*, OAL Dkt. No. EDS 10356-09, 2009 N.J. AGEN LEXIS 710, Emergent Relief Decision (October 13, 2009).

"Stay put" does not apply where the school district and the parents have expressly agreed to resolve the very issue within the IEP process. *D.H. ex rel. M.H. v. Somerset Hills Regional Bd. of Educ.*, OAL Dkt. No. EDS 8743-09, 2009 N.J. AGEN LEXIS 690, Emergent Relief Decision (October 2, 2009).

Mother was not entitled to emergent relief, seeking change of placement from home instruction to the district's high school because irreparable harm was not established as long as the district was providing the student with home instruction for each of the four courses that he was supposed to be taking; if such instruction was not being provided, the district had to take whatever steps were necessary to ensure that he was not falling further behind by not receiving the education to which he was entitled. Additionally, the mother failed to demonstrate that the legal right to her claim was settled, especially where the district provided the mother with adequate notice of the IEP meeting, which she could not attend, provided her with the IEP that was created at that meeting, reviewed the IEP with her at a subsequent meeting, and followed up the meeting with her by sending a letter confirming that the need for an out of district placement was part of the IEP for 2009-2010; since the mother did not take action, such as requesting mediation through due process before the fifteenth day after the IEP was sent to her, the IEP was implemented without her signature and went into effect, indicating placement of the student out of district and home instruction became the "stay put" placement pending a determination of where he would be placed for the school year. *A.D. ex rel. I.D. v. Cherry Hill Twp. Bd. of Educ.*, OAL Dkt. No. EDS 10009-09, 2009 N.J. AGEN LEXIS 680, Emergent Relief Decision (September 25, 2009).

School district was not entitled to emergent relief modifying the "stay put" placement of a six-year-old special education student because, although the affidavits and supporting documents presented by the district described behaviors by student in his kindergarten class and the district's attempts to deal with them, those behaviors were present during the pendency of the proceeding and the district did not file its emergent application until nine months into this matter; the district's application did not contain current information on the behavior and, while the district was not to be faulted for attempting to address possible future behavioral problems that the student might exhibit in the school year, the information presented in its emergent application did not meet the standard for setting aside the "stay put" placement. *A.C. ex rel. D.F. v. Collingswood Borough Bd. of Educ.*, OAL Dkt. No. EDS 589-09, 2009 N.J. AGEN LEXIS 737, Emergent Relief Decision (September 17, 2009).

Although parents may not have timely requested mediation or due process within the time limits set forth in N.J.A.C. 6A:14-2.3, the failure to strictly comply with the regulation did not necessarily preclude parents and children from receiving its "stay put" protection, especially where the parents never signed the IEP, advised the district that they were not comfortable with the placement, and expressed a desire to seek another placement. The district was, therefore, on notice of the parents' disagreement with the placement. *C.T. ex rel. J.H. v. Magnolia Boro Bd. of Educ.*, OAL Dkt. No. EDS 8945-09, 2009 N.J. AGEN LEXIS 623, Emergent Relief Decision (September 11, 2009).

Mother was entitled to emergency relief removing her son from Ancora Psychiatric Hospital, to Bancroft's Lindens Neurobehavioral Stabilization Program, a program for youngsters with severe behavioral disabilities; there was evidence that Ancora was ill-equipped to address the son's behavioral problems and that he was at substantial risk of physical harm by himself or others at Ancora. Additionally, there was a legal right underlying mother's claim, the mother would likely obtain residential placement for her son at a due-process hearing, and the son would suffer greater harm than the board would suffer if the requested



relief was not granted. C.B. ex rel. C.B. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 4153-09, 2009 N.J. AGEN LEXIS 592, Emergent Relief Decision (September 9, 2009).

Mother's petition for emergent relief seeking to have her disabled child moved from in-home instruction to an out of district placement was denied where: 1) the mother produced no evidence that she or her son would suffer irreparable harm if the stay-put provision continued; 2) the right to a transfer to a neighboring school district or to a non accredited private school was not a settled legal right; 3) and when the equities and interests of the parties were balanced, the child would not suffer any greater harm by continuing in the home school setting until permanent placement was established, especially if he posed a risk to himself and his fellow students. K.P. ex rel. K.A. v. Maple Shade Twp. Bd. of Educ., OAL Dkt. No. EDS 8871-09, 2009 N.J. AGEN LEXIS 593, Emergent Relief Decision (September 8, 2009).

School board's application for emergent relief authorizing the release of a student's records was granted as was its request that petitioner cooperate with the application process where: 1) it was clear that the student would suffer irreparable harm if his permanent placement was not established in the immediate future and continuing in the home instruction, the most restrictive placement, for an indefinite period, would not be in the child's best interest; 2) the board's legal right to the release of this information was well settled; 3) the school board had the likelihood of success on the merits since prior case law consistently granted emergent relief in cases where the parents' refusal to consent deliberately thwarted the school district's attempt to provide a free and appropriate public education; and 4) weighing and balancing the equities in the matter, the board would, in fact, suffer greater harm than the student if his records were not released. K.P. ex rel. K.A. v. Maple Shade Twp. Bd. of Educ., OAL Dkt. No. EDS 8871-09, 2009 N.J. AGEN LEXIS 593, Emergent Relief Decision (September 8, 2009).

Parents were not entitled to emergent relief in their action seeking promotion of their child to seventh grade where the parents failed to provide any precedent showing that a grade promotion could be brought about through emergent relief, especially where courts give substantial deference to school boards on issues of promotion and retention; granting such relief without a full evidentiary hearing would have been almost impossible. R.L. ex rel. E.L. v. Holmdel Twp. Bd. of Educ., OAL Dkt. No. EDS 8811-09, 2009 N.J. AGEN LEXIS 581, Emergent Relief Decision (September 2, 2009).

Summary disposition in favor of the school board was appropriate where all of the relief sought by petitioner parents was already provided and their additional demands were outside of the pending petition; a request for a due process hearing must state the specific issues in dispute and the relief sought. Petitioners could not raise issues or requests for relief not contained in a pending petition absent an amended petition with the consent of the other party or court permission. W.W. ex rel. B.W. v. Wyckoff Bd. of Educ., OAL Dkt. No. EDS 07397-09, 2009 N.J. AGEN LEXIS 556, Final Decision (August 14, 2009).

Parents' February 2009 due process petition was untimely where the events forming the basis for their complaint took place five years earlier when their son was declared ineligible for special education at the outset of the 2003-04 school year. B.M. ex rel. M.M. v. Livingston Twp. Bd. of Educ., OAL Dkt. No. EDS 05503-09, 2009 N.J. AGEN LEXIS 566, Final Decision (August 5, 2009).

Parents of a disabled student were not entitled to emergency relief in the form of transportation for the student to attend an extended school year program because there was a material factual dispute as to the evaluations and services to which the student was entitled and there was no settled legal right for the student to receive transportation to and from the out of district ESY programs in the afternoon. C.T. ex rel. J.H. v. Magnolia Borough Bd. of Educ., OAL Dkt. No. EDS 8278-09, 2009 N.J. AGEN LEXIS 508, Emergency Relief Decision (July 22, 2009).

Mother of a disabled student was not entitled to emergent relief in the form of additional Discrete Trial Training Services in the absence of any proof establishing irreparable harm resulting from the diminished number of hours of DTTS, and in light of the factual issue with respect

to the number of hours of DTTS actually provided; the mother believed that the student was entitled to an additional 30 hours of DTTS, whereas the district believed that the DTTS was encompassed in the student's attendance at an extended school year program. L.L. ex rel. S.L. v. Cinnaminson Twp. Bd. of Educ., OAL Dkt. No. EDS 8256-09, 2009 N.J. AGEN LEXIS 498, Emergency Relief Decision (July 15, 2009).

In a request for emergent relief "stay put," parents of a 19-year-old student with Asperger's syndrome were not required to meet the four-prong test for injunctive relief, but nevertheless, the parents were not entitled to relief because an extended school year was never included in the student's last two agreed upon IEPs; since the purpose of "stay put" was to maintain the status quo pending the outcome of the due process procedure, it was the last agreed upon IEP which controlled, and emergent relief could not have been granted based upon the application of "stay put". J.D. v. West Windsor-Plainsboro Regional Bd. of Educ., OAL Dkt. No. EDS 8122-09, 2009 N.J. AGEN LEXIS 497, Emergency Relief Decision (July 13, 2009).

Parents of a 19-year-old student with Asperger's syndrome were not entitled to emergent relief in the form of an extended school year where the evidence revealed that the student was already attending the summer program and the only thing at issue was who was responsible for payment; the student would not suffer irreparable harm because he was already receiving the service. J.D. v. West Windsor-Plainsboro Regional Bd. of Educ., OAL Dkt. No. EDS 8122-09, 2009 N.J. AGEN LEXIS 497, Emergency Relief Decision (July 13, 2009).

Parents of a disabled student were not entitled to emergent relief in the form of an extension of an already scheduled extended school year (ESY); while ESY programs were typically in place to deal with the regression and recoupment issue that was especially important with regard to special education students, there was no showing that adding an additional two or three weeks to the already scheduled five week ESY session was warranted by the unique needs of their child. J.S. ex rel. C.S. v. Middletown Twp. Bd. of Educ., OAL Dkt. No. EDS 8023-09, 2009 N.J. AGEN LEXIS 453, Emergency Relief Decision (July 1, 2009).

Mother of an autistic student was not entitled to emergent relief in the form of an extended school year where it was not shown that the student would regress in either his academic or social development if ESY was not provided. B.C. ex rel. B.W. v. Palmyra Borough Bd. of Educ., OAL Dkt. No. EDS 8025-09, 2009 N.J. AGEN LEXIS 458, Emergency Relief Decision (June 26, 2009).

Mother was entitled to emergent relief from a board's determination to exclude her disabled son from his graduation based on his involvement in a fight because the board's disciplinary meeting served the double-duty of a manifestation determination review required under N.J.A.C. 6A:14-2.8(e)(2), as well as the disciplinary action; in addition to the fact that there was no written determination on the result of that review, it was contrary to the spirit of the regulation to progress to consideration of the discipline of a special education student without regard to his disability when there was barely a review of whether his behavior was a manifestation of his disability. M.R. ex rel. Q.R. v. Hoboken Charter School, Bd. of Educ., OAL Dkt. No. EDS 07232-09, 2009 N.J. AGEN LEXIS 459, Order for Emergent Relief (June 23, 2009).

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).

Parent's request for emergent relief to allow her homebound instructed 14-year-old autistic son to participate in an eighth grade "step up" ceremony was denied because participation in such an event was a privilege not a right; additionally, the district had not yet determined that

the student's behavior no longer posed a substantial risk to himself and others. J.W. ex rel. D.W. v. Glassboro Twp. Bd. of Educ., OAL Dkt. No. EDS 4992-09, 2009 N.J. AGEN LEXIS 456, Emergency Relief Decision (June 18, 2009).

School district's decision to prohibit a student from participating in graduation ceremonies due to his failure to achieve 20 credits of English, no matter how regrettable and unfortunate, could not be disturbed where attendance at graduation was a privilege, not a right, and, therefore, could not result in irreparable harm; the student's claim that he could not pass the class because he was suffering from depression was not supported by the record, especially where he was passing his other classes. S.S. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 4959-09, 2009 N.J. AGEN LEXIS 455, Emergency Relief Decision (June 17, 2009).

Parents of a disabled high school senior, who was not allowed to participate in Senior Fest activities as part of a disciplinary measure because of his multiple suspensions, were not entitled to emergent relief to allow the student to participate because, especially where participating in such activities was a privilege and not a right, the parents failed to demonstrate that the student would suffer irreparable harm if the requested relief was denied; additionally, there were substantial facts in dispute as to whether any of the four suspensions given were given in error and it was imperative for the district to maintain the integrity of its disciplinary process. M.L. ex rel. S.L. v. Ewing Twp. Bd. of Educ., OAL Dkt. No. EDS 4950-09, 2009 N.J. AGEN LEXIS 454, Emergency Relief Decision (June 15, 2009).

District was entitled to emergent relief in order to conduct a comprehensive psychiatric diagnostic assessment of a 12-year-old multiply disabled student because, although her parents and the district disagreed on whether her behaviors had escalated, enough evidence existed to warrant at least a psychiatric component or an early re-evaluation in order to facilitate the district's ability to provide FAPE for the student through an appropriate placement. River Edge Bd. of Educ. v. E.F. ex rel. V.F., OAL Dkt. No. EDS 05680-09, 2009 N.J. AGEN LEXIS 313, Order for Emergent Relief (June 1, 2009).

Parent's emergent request that the district provide transportation to and from a psychiatric facility for her 12-year-old autistic son was denied because, although the student would have suffered irreparable damage had he discontinued the program at the facility prematurely, the evidence was conflicting as to whether he continued to pose a threat to himself or others and there was no settled legal right for him to receive transportation to and from the school district in the afternoon. A.G. ex rel. S.P. v. East Windsor Regional Bd. of Educ., OAL Dkt. No. EDS 4422-09, 2009 N.J. AGEN LEXIS 279, Decision on Application for Emergent Relief (May 15, 2009).

Although a multiply disabled fourth grader made progress in the language arts literacy program, it failed to result in sufficient progress since he still read at a first- or second-grade level; therefore, the district failed to provide the student with a FAPE, in that the district did not provide meaningful educational benefit to the student. K.R. ex rel. H.R. v. Union Beach Borough Bd. of Educ., OAL Dkt. No. EDS 10364-07 and EDS 8323-08, 2009 N.J. AGEN LEXIS 255, Final Decision (April 28, 2009).

Although N.J.A.C. 6A:14-2.7(k) applies to a due process hearing, it also pertains to procedural violations as alleged in the due process complaint and not just to the procedures related to the due process hearing itself; therefore, where the district failed to comply with an order to allow the parents' expert to observe the district's proposed placement, the parents' opportunity for an impartial due process hearing was violated. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

School district was entitled to emergent relief on its petition to have a 14-year-old autistic student placed temporarily on homebound instruction for up to 45-days due to disruptive and dangerous behaviors, including running away from his aide and other adults, eloping from the school building, running out into traffic, refusing to listen to instructions

or warnings, jumping on desks and counters, running around the classroom, throwing objects, hitting, kicking, spitting, screaming, crying; the student's dangerous behavior was preventing himself and his classmates from receiving an appropriate education and created a substantial risk of injury to himself and others. J.W. ex rel. D.W. v. Glassboro Bd. of Educ., OAL Dkt. No. EDS 4007-09, 2009 N.J. AGEN LEXIS 165, Decision on Emergent Relief (April 9, 2009).

Parents of a 19-year-old disabled student were entitled to emergent relief requiring the Board to fully implement the student's IEP, including its requirement that the student receive five hours per week of individualized services from an educational consulting program; the student was showing signs of distress from the change in schedule and he had a settled legal right to the program under the IEP. O.U. ex rel. S.U. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 578-09, 2009 N.J. AGEN LEXIS 78, Emergency Relief Decision (March 9, 2009).

"Stay put" provision acted as an automatic statutory injunction against a district's effort to cease providing five hours a week of individualized services from an educational consulting program for a 19-year-old disabled student, as set forth in his IEP. O.U. ex rel. S.U. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 578-09, 2009 N.J. AGEN LEXIS 78, Emergency Relief Decision (March 9, 2009).

Although a mother was not entitled to emergent relief after her disabled daughter was placed in a new program with the father's consent, the "stay put" provisions of the IDEA applied and the district was ordered to place the student in the last uncontested placement pending a full hearing; there was no explanation for why the IEP meeting excluded the mother where both she and the father enjoyed joint legal custody of the student. V.K. ex rel. D.K. v. Ewing Twp. Bd. of Educ., OAL Dkt. No. EDS 502-09, 2009 N.J. AGEN LEXIS 122, Emergency Relief Decision (February 23, 2009).

Parents of a multiply disabled 16-year-old student were entitled to emergent relief and the district was ordered to place the student in his original out-of-district placement pending a plenary hearing because the in-district program offered by the district was not "comparable" to the program provided by the out-of-district school; although it was clear that the district made a good faith effort to provide the student with an appropriate program in the least restrictive environment, the in-district program was just not the equivalent of the program he was originally receiving. M.H. ex rel. S.H. v. Northern Burlington Co. Regional Bd. of Educ., OAL Dkt. No. EDS 303-09, 2009 N.J. AGEN LEXIS 77, Decision on Emergent Relief (February 9, 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. Weast*, 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).

Parents of a 14-year-old "other impaired" student were not entitled to emergent relief to have the student placed in high school instead of an additional year of eighth grade where the assessment tests showed that a ninth grade placement would not have been appropriate for the student and would have set him up to fail even with Child Study Team interventions. *J.U. ex rel. T.U. v. Warren Hills Regional High Bd. of Educ.*, OAL Dkt. No. EDS 09912-08, 2008 N.J. AGEN LEXIS 1263, Order Denying Emergent Relief (September 5, 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 schizoaffective 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).

School district's proposed change in placement of a 12-year-old student with ADHD from a regular classroom with accommodations to an alternative classroom was found to be an appropriate placement. Although the parents believed that the student's disruptive, non-compliant and dangerous behaviors were the result of ADHD and should have been dealt with by the school district as a part of the Section 504 Plan or with a behavior modification plan, a regular classroom setting was not appropriate, rather, the establishment and implementation of a behavior modification plan in an alternative placement was warranted. *V.J. ex rel. K.C. v. Maple Shade Twp. Bd. of Educ.*, OAL DKT. EDS 68-08, 2008 N.J. AGEN LEXIS 163, Final Decision (March 10, 2008).

Mother of a 19-year-old student with several disabilities, including Down syndrome, autism, and epilepsy was not entitled to emergency relief because there was an obvious dispute between the parties concerning the adequacy of the student's out-of-district placement and resolution of the dispute required consideration of fact and opinion evidence in a plenary proceeding; additionally, even the mother's expert opined that compensatory education was a possibility, which refuted the idea that failure to grant relief would result in irreparable harm. *L.K. ex rel. A.K. v. Cherry Hill Twp. Bd. of Educ.*, OAL Dkt. No. EDS 899-08, 2008 N.J. AGEN LEXIS 164, Decision on Application for Emergency Relief (March 10, 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).

In a dispute between two municipalities within a county over the amount of tuition and credits that were owed between the municipalities over multiple school years, the municipalities could not expect a dispositive ruling from the County Superintendent after they submitted the disputes to mediation and mediation proved to be unsuccessful. *Bd. of Educ. of the Borough of Mountainside, Union Cnty. v. Bd. of Educ. of the Twp. of Berkley Heights, Union Cnty.*, OAL Dkt. NO. EDU 9700-06, 2008 N.J. AGEN LEXIS 1504, Final Decision (January 17, 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).

Parents' motion for emergent relief to include a behavior analyst in their autistic son's IEP was denied where they failed to show that, when the case was fully heard, they had a probability of prevailing on their underlying claim; there were substantial material issues of fact in the case because, although the teachers recognized the student's lack of social skills, they believed he made satisfactory educational progress to continue to participate in the general education setting. *W.S. ex rel. W.S. v. Metuchen Bd. of Educ.*, OAL Dkt. No. EDS 8820-07, 2007 N.J. AGEN LEXIS 742, Decision Denying Emergent Relief (November 15, 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).

Parents of seven-year-old child who received special education due to blindness and cerebral palsy were granted a stay-put order continuing placement of their child at her school pending a determination as to her



appropriate placement. The last IEP was still in effect at the time of the dispute over the proposed new IEP and the parents were under no obligation to demonstrate entitlement to emergent relief. S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ., OAL DKT. EDS 8094-07, 2007 N.J. AGEN LEXIS 650, Final Decision (September 27, 2007).

Parents of a disabled teenager were denied a stay-put order requiring that their son be mainstreamed into a high school. An IEP developed over two years earlier, that was never implemented, could not be considered the status-quo and serious behavioral issues of the child at his other placement left the district with the only alternative of providing home instruction pending the outcome of the due process petition. R.D. ex rel. G.D. v. Lenape Regional Bd. of Educ., OAL DKT. EDS 8093-07, 2007 N.J. AGEN LEXIS 653, Final Decision (September 25, 2007).

Parents' motion for a stay-put order was denied where no signed IEP for shared placement in a district high school and an out-of-district vocational school was ever submitted, and the parents failed to demonstrate that a previously offered shared placement program would not provide their disabled daughter a FAPE. D.B. ex rel. S.B. v. Freehold Regional High School Bd. of Educ., OAL DKT. EDS 6799-07, 2007 N.J. AGEN LEXIS 643, Final Decision (September 12, 2007).

Mother of a 10-year-old autistic student was not entitled to emergent relief in the form of an out-of-district placement because there was no authority allowing for the placement of a special education student in a non-accredited school; as such, the mother failed to demonstrate the likelihood of prevailing on the merits of her claim and the legal right underlying her claim was not well-settled. T.G. ex rel. S.G. v. Union Beach Borough Bd. of Educ., OAL DKT. EDS 6801-07, 2007 N.J. AGEN LEXIS 640, Final Decision (September 12, 2007).

Parents of a pre-school aged child eligible for special education services failed to demonstrate that they were entitled to emergent relief in the form of immediate placement of their child in another school where the parents failed to submit any evidence that the child regressed over the summer months without an extended school year and, if placed in the district's preschool disabled program, the student would continue to suffer irreparable harm. If it was later established that the child regressed because of the district's alleged failure to provide an extended school year program, the court could order compensatory education to make up "for lost time." J.Y. ex rel. Q.Y. v. Westampton Twp. Bd. of Educ., OAL DKT. EDS 6740-07, 2007 N.J. AGEN LEXIS 645, Final Decision (September 11, 2007).

Applicant seeking a stay-put order need not meet the four-part standard of *Crowe v. DiGioia*, 90 N.J. 126 (1982). M.L. ex rel. R.H. v. Beverly City Bd. of Educ., OAL DKT. EDS 6657-07, 2007 N.J. AGEN LEXIS 622, Final Decision (September 7, 2007).

Provisions of N.J.A.C. 6A:14-2.7(u) prohibiting any change to a student's classification, program or placement pending the outcome of a due process hearing had the same meaning as the language of 20 U.S.C.S. § 1415 (j) requiring a child to remain in the then-current educational placement during the pendency of any proceedings. Since the State regulation was authorized by and was adopted pursuant to the Federal statute, their provisions were accepted as having the same meaning. M.L. ex rel. R.H. v. Beverly City Bd. of Educ., OAL DKT. EDS 6657-07, 2007 N.J. AGEN LEXIS 622, Final Decision (September 7, 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 of a 13-year-old autistic child were granted a temporary order for a "stay put" of a one-on-one Applied Behavioral Analysis shadow to implement the child's behavior program pursuant to her IEP where the usual prerequisites of injunctive relief, such as irreparable harm and a likelihood of prevailing on the merits of the underlying claim, were not required in an emergent relief hearing regarding a student's placement pending a due process hearing. E.B. ex rel. H.B. v. Glassboro Bd. of Educ., OAL DKT. EDS 6554-07, 2007 N.J. AGEN LEXIS 714, Final Decision (August 23, 2007).

Mother failed in her quest to declassify her 13-year-old multiply disabled daughter where the mother admitted that the father originally gave his consent to the school district to evaluate and classify the daughter. Although the mother argued that her husband's involvement with the child was worthless, she provided neither proof nor any appropriate court order from any tribunal to demonstrate that she had exclusive and sole custody over the child. J.S. ex rel. C.S. v. Brick Twp. Bd. of Educ., OAL DKT. EDS 4923-07, 2007 N.J. AGEN LEXIS 475, Final Decision (July 24, 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).

Parent of a 13-year-old severely autistic child with epilepsy was unsuccessful in seeking emergency relief for an interim residential placement because, although the district agreed that in light of the student's significant behavioral needs and constant need for supervision that a residential placement would be investigated, the parent's fear of losing a spot at a particular school was not "irreparable harm" where there was no clear showing that the school was the only appropriate placement available. M.L. ex rel. R.L. v. Marlboro Twp. Bd. of Educ., OAL DKT. EDS 631-07, 2007 N.J. AGEN LEXIS 120, Final Decision (March 14, 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).

Parents of an 18-year-old emotionally disturbed child were not entitled to emergent relief in the form of maintaining their daughter's out-of-district educational placement where they failed to demonstrate that the child would suffer irreparable harm if the requested relief was not granted; the new IEP provided for special education as well as a plan for behavioral interventions. *C.W. ex rel. B.W. v. Willingboro Twp. Bd. of Educ.*, OAL DKT. EDS 6635-06, 2006 N.J. AGEN LEXIS 837, Final Decision (September 20, 2006).

ALJ refused to exercise discretion under N.J.A.C. 6A:14-2.7(o) and order change of placement pending outcome of the due process hearing where parents of a learning disabled child failed to demonstrate irreparable harm; there was nothing in the record to indicate that the student did not make progress in math, media and gym in-district in the 10th grade and the proposed 11th-grade placement required the student to attend the remaining core subjects in resource room with various related services. *T.B. ex rel. T.B. v. Clearview Reg'l Bd. of Educ.*, OAL DKT. EDS 6499-06, 2006 N.J. AGEN LEXIS 806, Decision (September 14, 2006).

School district was ordered to release student records even after the parent withheld her consent to the release of such records; placement of a 15-year-old in an out-of district educational facility had to be effectuated if the student was to receive a FAPE but no potential out-of-district school would consider accepting him as a student without first having an opportunity to review his student records. *Asbury Park Bd. of Educ. v. M.J. ex rel. S.J.*, OAL DKT. EDS 6265-06, 2006 N.J. AGEN LEXIS 743, Final Decision (August 31, 2006).

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).

Because a school district had an obligation to provide every child with a free and appropriate education, it had the right to petition the court to override a parent's refusal to consent to an initial evaluation where a teacher identified the student as having academic problems; when compared to the successes the student met, the academic problems may have appeared minor, but it was far better to understand now why he was having the difficulty in language arts so they may be corrected while he is of young age. *I.A. ex rel. M.A. v. Ramsey Bd. of Educ.*, OAL Dkt. No. EDS 9631-05, 2005 N.J. AGEN LEXIS 619, Final Decision (October 11, 2005).

Parent of a 19-year-old son with spina bifida and anxiety failed to demonstrate the likelihood of prevailing on the merits of her underlying claim nor was she able to demonstrate irreparable harm if she was not granted her emergency request for placement of her son at another school that was neither an accredited nor approved New Jersey Department of Education. Such a dispute was best resolved during a plenary proceeding. *B.W. ex rel. D.W. v. Lenape Regional Bd. of Educ.*, OAL

DKT. EDS 6933-05, 2005 N.J. AGEN LEXIS 1140, Final Decision (October 5, 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 individualized education program. *G.M. v. Vineland Board*, 95 N.J.A.R.2d (EDS) 233.

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

Child study team evaluation requested by one parent was not required for progressing student in joint custody 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).

Mother was entitled to emergent relief from a board's determination to exclude her disabled son from his graduation based on his involvement in a fight because the board's disciplinary meeting served the double-duty of a manifestation determination review required under N.J.A.C. 6A:14-2.8(e)2, as well as the disciplinary action; in addition to the fact that there was no written determination on the result of that review, it was contrary to the spirit of the regulation to progress to consideration of the discipline of a special education student without regard to his disability when there was barely a review of whether his behavior was a manifestation of his disability. *M.R. ex rel. Q.R. v. Hoboken Charter School, Bd. of Educ.*, OAL Dkt. No. EDS 07232-09, 2009 N.J. AGEN LEXIS 459, Order for Emergent Relief (June 23, 2009).

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. Krivacka*, 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. Krivacka*, 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 were not entitled to reimbursement of costs at a private school pursuant to N.J.A.C. 6A:14-2.10(b) when the Board of Education sustained its burden in provided that a fee appropriate public education within the least restrictive environment was offered to their child. Even though there was no disagreement that the private school was not in existence at time of the Individualized Education Program (IEP), it was speculative for the parents to outright reject this IEP as inappropriate. The school psychologist genuinely described a program that the Board was prepared to implement regardless of the school venue. The IEP offered a special education setting to address the student's learning based disability in reading, writing and math, and the lack of an extended school year was not a fatal flaw to the IEP. *J.R. and B.P. ex rel. D.R. v. Ridgewood Village Bd. of Educ.*, OAL Dkt. No. EDS 13890-12, 2014 N.J. AGEN LEXIS 318, Final Decision (June 12, 2014).

An Administrative Law Judge (ALJ) concluded that a school district had provided a learning-disabled high school student with a free and appropriate public education within the meaning of the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400. That being so, the student's parents were not entitled to reimbursement per N.J.A.C. 6A:14-7.5(b)3 of the costs that they had incurred in unilaterally removing him from the public school and enrolling him in an out-of-district residential program. Nor did the parents give the school district at least 10 days' notice that they were rejecting the Independent Educational Plan and enrolling the student in an out-of-district placement as required by N.J.A.C. 6A:14-2.10(c). G.R. and S.R. ex rel. D.R. v. Mt. Olive Twp. Bd. of Educ., OAL Dkt. No. EDS 8115-12, AGENCY Dkt. No. 2012-18395, 2014 N.J. AGEN LEXIS 227, Final Decision (June 2, 2014).

An Administrative Law Judge concluded that the parents of a 10 year old learning-disabled child were entitled to reimbursement for the cost of the child's attendance at an out-of-district private school notwithstanding that that school, though accredited, was not "approved" by the Department of Education for the education of learning disabled children. Once it was determined that the public school was not providing the child with a free and appropriate public education within the meaning of 20 U.S.C.S. § 1412 and N.J.A.C. 6A:14-1.1, the central inquiry was whether the substitute placement—here, a private school—conferred a meaningful educational benefit on the child. That the methods used in the public school were not effective was evident in the child's steady performance decline from second to third grade and his increased anxiety and emotional frustration as the work became more advanced. The IEP developed per N.J.A.C. 6A:14-3.7(b) that was in place during the last year of his public school attendance education did little more than repeat the same goals and objectives from the two prior years, without offering a way to address problems that had manifested themselves in the intervening time. Moreover, the record showed that the student's performance was regressing, not progressing. Since the program used by the public school was not effective in educating the student due to his unique language-processing disorder and since it appeared that the program in the out-of-district private school was better adapted to the student's needs, the placement was appropriate even if it did not meet the standards provided by the district board of education per N.J.A.C. 6A:14-2.10(b) and the parents were entitled to reimbursement of the resulting expenses. S.S. and H.S. ex rel. P.S. v. Colts Neck Twp. Bd. of Educ., OAL Dkt. No. EDS 13645-12, AGENCY Dkt. No. 2013 18904, 2014 N.J. AGEN LEXIS 81, Final Decision (February 14, 2014).

An Administrative Law Judge (ALJ) concluded that a school district had provided a disabled student with a free, appropriate public education within the meaning of 20 U.S.C.S. § 1412. Assuming, however, that the school district had not done, the district was not obligated to reimburse his parents for the cost of placing the student in a private facility because the private facility was not a "school" within the meaning of N.J.A.C. 6A:14-2.10(b) and the district could have no obligation to reimburse the parents for costs incurred in a facility that was not a "school." T.W. and L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ., OAL Dkt. No. EDS 12854-12, AGENCY REF. No. 2013-18770, 2014 N.J. AGEN LEXIS 80, Final Decision (February 4, 2014).

Regional board of education properly refused to reimburse the father for the cost of enrolling a son whose learning disabilities made him eligible for special education and related services in a private boarding school because the placement did not comply with regulations concerning notice and cooperation. Since the son was enrolled at the private school on August 13, 2012, he was de facto removed and disenrolled from the public school sometime on or prior to that date. The written notice provided to the board on August 24, 2012 did not satisfy N.J.A.C. 6A:14-2.10(c) because, inter alia, the father did not provide notice of the placement to the board no less than ten days prior to the son's removal from the public school as the regulation required. W.D. ex rel. W.D. v. Watchung Hills Reg'l Bd. of Educ., OAL Dkt. No. EDS 15092-12, 2013 N.J. AGEN LEXIS 47, Final Decision (March 5, 2013).

Where a district offered FAPE to a student, it was unnecessary to analyze further whether the alternative program that the parents unilaterally moved the student to was appropriate because, while the

student did well in the alternative program and the program offered many supports, the appropriateness of an IEP was not determined by a comparison of the private school and the program proposed by the district; rather, the pertinent inquiry was whether the district's IEP offered FAPE and the opportunity for meaningful educational benefit within the least restrictive environment. L.W. ex rel. R.W. v. Norwood Bd. of Educ., OAL Dkt. No. EDS 11680-09, 2011 N.J. AGEN LEXIS 31, Final Decision (January 18, 2011).

Although the parents of a disabled student claimed that the district failed to offer the student FAPE, the record clearly demonstrated that the district sought to work with the parents on developing an appropriate IEP, but that the parents refused to collaborate with the district in any meaningful way. The record showed that the parents did not fully participate in the meetings with the district, having already made the decision to unilaterally move the student to a private program; as such, they were not entitled to reimbursement. L.W. ex rel. R.W. v. Norwood Bd. of Educ., OAL Dkt. No. EDS 11680-09, 2011 N.J. AGEN LEXIS 31, Final Decision (January 18, 2011).

Parents were not entitled to reimbursement for the unilateral placement of their child in a private extended school year (ESY) program in 2008 where the district offered a timely and appropriate ESY program of its own. The district was entitled to delay committing to an ESY without first evaluating whether the student would regress during the summer months; therefore, even though the parents requested an ESY in the beginning of the school year and the district did not commit until two months of the regular school year remained, the district's ESY program was timely. O.P. ex rel. L.P. v. Rutherford Bd. of Educ., OAL Dkt. No. EDS 7426-09, 2010 N.J. AGEN LEXIS 415, Final Decision (August 18, 2010).

Parents were entitled to reimbursement for the unilateral placement of their child in a private extended school year (ESY) program in 2009 where the district failed to offer a FAPE. The district's services for the ESY were contingent upon the student's enrollment in either the YMCA summer program or the Rutherford recreation program at the parents' expense, which was violated the notion of a free education. O.P. ex rel. L.P. v. Rutherford Bd. of Educ., OAL Dkt. No. EDS 7426-09, 2010 N.J. AGEN LEXIS 415, Final Decision (August 18, 2010).

N.J.A.C. 6A:14-2.10 required as a condition precedent of any claim for reimbursement for a voluntary placement that the parents give the district 10 days advanced notice of their intention to remove the child, but it did not require the district to evaluate the child within those 10 days, only to "propose" and "provide notice" within those 10 days of its response on the issue of reevaluation. Thus, where the district sent the parents notice within 10 days of its intent to evaluate the child but the parents refused to make the child available for an evaluation past the 10-day period, the parents were not entitled to reimbursement for their unilateral placement of the child in an alternative program. A.P. ex rel. J.F.-P. v. Clifton Bd. of Educ., OAL Dkt. No. EDS 07554-09, 2010 N.J. AGEN LEXIS 302, Final Decision (June 25, 2010).

Parents failed to demonstrate entitlement to reimbursement for the expenses associated with placement of their child in an alternative preschool because they acted unreasonably during the IEP process by refusing to work with the district once they learned that the child had Asperger's syndrome. The parents immediately sought services elsewhere without any notice to the district and without alerting the district to their dissatisfaction with the current program, or their sincere belief that the child needed something different than the district could offer. G.R. ex rel. J.R. v. Montclair Bd. of Educ., OAL Dkt. No. EDS 13573-09, 2010 N.J. AGEN LEXIS 459, Final Decision (June 2, 2010).

Disabled student's IEPs were not deficient because, even though many of the teacher remarks in the progress notes were subjectively based, the goals and objective in the IEPs were not so vague that they were meaningless; rather, they contained detailed statements of annual goals that were measurable. Because the student had become partially proficient in the majority of the objectives contained within the IEPs and also mastered the majority of targets contained in the objectives, the district provided the student with a FAPE reasonably calculated to provide significant learning and meaningful benefit and the parents were

not entitled to reimbursement following their unilateral placement of the student in a different program. J.M. ex rel. L.M. v. Wayne Twp. Bd. of Educ., OAL Dkt. No. EDS 12465-08, 2010 N.J. AGEN LEXIS 243, Final Decision (May 6, 2010).

Where parents placed their child in the Outback and Island View treatment Centers mid-2007, but waited until February 2009 to file a due process petition, such an extended period of time prior to filing a due process petition for reimbursement qualified as "unreasonable action" for purposes of N.J.A.C. 6A:14-2.10; additionally, petitioners' email simply discussing the option of placing their son in a wilderness camp did not suffice as notice of intent to remove the student from the school district. B.M. ex rel M.M. v. Livingston Twp. Bd. of Educ., OAL Dkt. No. EDS 05503-09, 2009 N.J. AGEN LEXIS 566, Final Decision (August 5, 2009).

Parents of an autistic 15-year-old were entitled to reimbursement for costs and expenses of a home based Applied Behavioral Analysis (ABA) program where the district failed to provide the student with a FAPE; even the district's experts opined that the student's original placement was deficient in several crucial aspects because the curriculum was too simple for him and his learning was impeded by the behavioral issues of other children. M.F. ex rel A.F. v. West Windsor-Plainsboro Regional Bd. of Educ., OAL Dkt. No. EDS 8905-08, 2009 N.J. AGEN LEXIS 499, Final Decision (July 16, 2009).

Although the district failed to provide a five-year-old autistic student with a FAPE because the IEP that provided for placement in kindergarten would not have been beneficial for the student, his parents' placement in Project Child as a regular student and without an IEP also did not provide him with a FAPE; the student did not have an IEP until after November 19, 2007, and the unilateral placement did not provide a FAPE until after November 19, 2007, resulting in the district being responsible for reimbursement for the unilateral placement for the period after November 19, 2007, until the end of the school year. M.W. ex rel T.W. v. Upper Freehold Regional Bd. of Educ., OAL Dkt. No. EDS 2618-08, 2009 N.J. AGEN LEXIS 79, Final Decision (March 9, 2009).

Parents of a multiply disabled student were not entitled to reimbursement after they unilaterally placed the child in a summer camp to aid in emotional and social progress because facility was not appropriate; the student's IEP was an educational program, in contrast to the camp, which was strictly a summer camp that provided no academic instruction and could not have been characterized as an educational facility. R.N. ex rel. R.N. v. Mount Olive Twp. Bd. of Educ., OAL Dkt. No. EDS 11142-08, 2009 N.J. AGEN LEXIS 82, Final Decision (March 4, 2009).

Parents of a multiply disabled student were not entitled to reimbursement after they unilaterally placed their disabled child in a summer camp because the parents did not inform the IEP team that they were rejecting the IEP proposed by the district and actually signed the IEP, even though it was clear that they planned on sending him to the camp by placing a non-refundable deposit prior to the IEP meeting; nor did the parents give the district at least 10 business days' notice prior to the removal of their child from the public school. R.N. ex rel. R.N. v. Mount Olive Twp. Bd. of Educ., OAL Dkt. No. EDS 11142-08, 2009 N.J. AGEN LEXIS 82, Final Decision (March 4, 2009).

Unilateral placement by parents occurs when the student previously received special education from the public district which did not meet the criteria of a free and appropriate education; because the student never met the prerequisite of having previously received special education, her placement in private school did not constitute a unilateral placement that would entitle her parents to reimbursement. R.J. ex rel. R.J. v. Milburn Twp. Bd. of Educ., OAL Dkt. No. EDS 11838-07, 2009 N.J. AGEN LEXIS 124, Final Decision (February 4, 2009).

Parents of a disabled 10-year-old were entitled to reimbursement for costs of alternative placement where the district failed to provide the student with a FAPE; although the student transferred into the district with a successful IEP from an out-of-state school, the district failed to take significant steps to adopt accommodations so that the student could succeed in the mainstream environment. Instead, the district made a predetermination that the student belonged in an out-of-district program

and made little effort to accommodate his genuine needs D.X. ex rel. R.X. v. Alpine Bd. of Educ., OAL Dkt. No. EDS 03216-08, 2008 N.J. AGEN LEXIS 1030, Final Decision (December 22, 2008).

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 were denied their request for tuition reimbursement for their unilateral placement of their son in the extended school year because the parents' informal expressions at the IEP team meeting that they were unhappy with the IEP team's proposal and wanted to have the student sent to an ESY program did not constitute a definitive statement that they were rejecting the proposed IEP. Additionally, the parents failed to give the Board 10 business days' written notice of their intent to place the student, providing the Board with only three business days' notice prior to the unilateral placement. A.P. ex rel. A.P. v. Monroe Twp. Bd. of Educ., OAL DKT. EDS 6976-07, 2007 N.J. AGEN LEXIS 741, Final Decision (October 17, 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 multiply disabled student were not entitled to reimbursement for out-of-district placement where the parents failed to inform the district at the most recent IEP meeting that they were rejecting the plan and failed to provide notice to the district at least 10 business days prior to the removing of the student from the public school. M.M. ex rel. R.M. v. North Brunswick Twp. Bd. of Educ., OAL DKT. EDS 8157-06, 2007 N.J. AGEN LEXIS 230, Final Decision (April 20, 2007).

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).

Parents' request for reimbursement for the unilateral placement of their child in an out-of-district school for two academic years was denied where they failed to provide the child study team the opportunity of providing their daughter a FAPE. J.S. ex rel. R.S. v. South Orange-Maplewood Bd. of Educ., OAL DKT. EDS 7417-05, 2006 N.J. AGEN LEXIS 440, Final Decision (June 14, 2006), aff'd, 2008 U.S. Dist. LEXIS 24031 (D.N.J. March 26, 2008).

Parents were entitled to reimbursement for the unilateral placement of their child in an out-of-district school for one academic school year where the child study team had information for over a year that constituted a finding that the student was eligible for special education and related services. Neither the resumption of litigation nor a summer recess justified the passage of one year for a child study team to convene an individual education program meeting to develop and implement a plan to meet the needs of an youngster it determined was in need of



special education. J.S. ex rel. R.S. v. South Orange-Maplewood Bd. of Educ., OAL DKT. EDS 7417-05, 2006 N.J. AGEN LEXIS 440, Final Decision (June 14, 2006), *aff'd*, 2008 U.S. Dist. LEXIS 24031 (D.N.J. March 26, 2008).

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' notice to the school district that they were unilaterally placing their disabled child in an alternative setting only two weeks prior to the start of the school year provided the district with adequate notice. S.P. ex rel. R.P. v. Millburn Twp. Bd. of Educ., OAL DKT. EDS 5291-05, 2005 N.J. AGEN LEXIS 705, Final Decision (December 5, 2005).

There was no justification for parents' unilateral placement of their disabled child where the district's various IEPs constituted a FAPE conferring an educational benefit within the least restrictive environment. In fact, many of the programs described by the parents' own experts that were taking place in their chosen placement mirrored those recommended by the school district. S.P. ex rel. R.P. v. Millburn Twp. Bd. of Educ., OAL DKT. EDS 5291-05, 2005 N.J. AGEN LEXIS 705, Final Decision (December 5, 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).

Where a student had not previously received special education and related services from the district, there was no authority to reimburse the tuition expenses arising from the parent's unilateral placement of the child in private school. P.C. ex rel. M.C. v. Hopewell Valley Reg'l Bd. of Educ., OAL DKT. EDS 6009-05, 2005 N.J. AGEN LEXIS 554, Final Decision (October 3, 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 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).

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).

Parents were entitled to reimbursement for the unilateral placement of their eight-year-old multiply disabled child in a home program where the district failed to provide the child with a free appropriate public education in a timely manner; however, because the mother contributed in delaying proper placement for the child by making misrepresentations about the child's abilities and submitting incomplete records, the reimbursement amount was reduced by half. F.D. ex rel. I.D. v. Ramsey Bd. of Educ., OAL Dkt. No. EDS 9938-04, 2005 N.J. AGEN LEXIS 489, Final Decision (August 29, 2005).

Twenty-year-old autistic student was entitled to compensatory education as well as immediate implementation of an original settlement agreement in which the district had promised a new behavior management plan, a medical evaluation and a behavioral consultant, where the student did not receive a FAPE; although the student was making satisfactory academic progress, his behavior in school and at home was inappropriate, falling far below the norms of the business and leisure society, including acts of self-stimulation, self-talk, emotional outbursts, lack of personal hygiene and an inability to socially interact within his community, at both school and home. G.C. ex rel. N.C. v. West Windsor-Plainsboro Bd. of Educ., OAL Dkt. No. EDS 8731-04, 2005 N.J. AGEN LEXIS 412, Final Decision (August 8, 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).*

Guardian prevailed on a petition challenging a school district's compliance with applicable state and federal law with respect to the educational needs of a minor who was diagnosed with an autism spectrum disorder (ASD). The district failed to carry its burden to establish, by a preponderance of the evidence, that the placement of the child would provide a meaningful educational benefit because its sole witness on this issue, the child's case manager, did not establish that the district had complied with all of the procedural requirements, that the child had been assessed in all areas of suspected disability in accord with N.J.A.C. 6A:14-3.1(a) and N.J.A.C. 6A:14-2.5(b); and that the district had based its placement decision on a proper IEP as required by N.J.A.C. 6A:14-3.7. Specifically, the district was required to determine what, if any, additional data was needed to determine the present levels of academic achievement and functional performance and educational and related developmental needs of the student and how they should appropriately be addressed in the student's IEP in accord with N.J.A.C. 6A:14-3.8(b)2ii-iii. *R.M. ex rel. T.S. v. Matawan-Aberdeen Reg'l Bd. of Educ., OAL Dkt. No. EDS 11443-12, AGENCY Dkt. No. 2013 18732, 2014 N.J. AGEN LEXIS 202, Final Decision (April 28, 2014).*

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(k)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.

Notice of readoption with technical change.

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

#### 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 Education 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).

Pursuant to the clear dictates of federal regulations and the Federal Office of Special Education Programs’ unequivocal direction, the parent on behalf of her child was entitled to independent evaluations for special education services at the school district’s expense as a matter of law under N.J.A.C. 6A:14-2.5(c)1ii, iii. The provisions of N.J.A.C. 6A:14-3.3 do not, and cannot, be read to suggest that a child cannot be evaluated for special education services unless all general education interventions have failed. N.J.A.C. 6A:16-8.1 clearly envisions general education intervention that supplements, and certainly does not preclude, special education services. *N.S. ex rel. W.S. v. Newark Bd. of Educ.*, OAL DKT. NO. EDS 08229-14, 2014 N.J. AGEN LEXIS 734, Initial Decision (November 19, 2014).

District provided ample evidence that the escalating behavioral and academic problems a 15-year-old student was experiencing, including the increased number and nature of reported disciplinary incidents and failing seventh grade, strongly suggested problems which could only have been resolved through a comprehensive evaluation of the student in order to address his educational needs; thus, where the student’s mother refused to cooperate in scheduling and producing the student for the requested assessments, the district was obligated to request an order directing the mother to consent to and cooperate in scheduling and completing the four assessments comprising the initial evaluation. *Pemberton Twp. Bd. of Educ. v. J.L. ex rel. A.M.*, OAL Dkt. No. EDS 7823-10, 2010 N.J. AGEN LEXIS 432, Final Decision (August 11, 2010).

Although the district did not strictly comply with the requirements of an identification meeting under N.J.A.C. 6A:14-3.3(e) where it failed to have a regular or special education preschool teacher present, the procedural error did not significantly hamper the process at the pre-evaluation meeting because the district had the benefit of the parents’ input and the written input of the child’s teacher. *A.P. ex rel. J.F.-P. v. Clifton Bd. of Educ.*, OAL Dkt. No. EDS 07554-09, 2010 N.J. AGEN LEXIS 302, Final Decision (June 25, 2010).

Where a student’s parents placed him in a parochial school on Staten Island in the State of New York, the “district of attendance” was in New York and the district in Jersey City was no longer responsible for “child find” with respect to the student. *I.L. ex rel. D.L. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 12533-08, 2009 N.J. AGEN LEXIS 167, Final Decision (March 25, 2009).

School board did not violate the “child find” provision because the provision was triggered only when the board had reason to suspect a

disability, and reason to suspect that special education services were needed to address that disability; although the student was suffering from crying, depression, sleep difficulty, poor appetite, weight loss, identity issues, and sleep disturbance, those conditions were not known to school personnel. *J.S. ex rel. R.S. v. South Orange-Maplewood Bd. of Educ.*, OAL DKT. EDS 7417-05, 2006 N.J. AGEN LEXIS 440, Final Decision (June 14, 2006), *aff’d*, 2008 U.S. Dist. LEXIS 24031 (D.N.J. March 26, 2008).

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 stu-

dent'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: 33 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).

An Administrative Law Judge (ALJ) concluded that there was no merit to a claim by the parents of a disabled student that the school district had violated their son's rights when it did not undertake a full triennial evaluation and opted to only obtain a speech evaluation. The record established that the parents in fact waived the triennial evaluation. Given the waiver, N.J.A.C. 6A:14-3.8 did not require the district to provide a full evaluation. Nor did the district violate the rights of the parents or the student by refusing to utilize a specific evaluator because the regulations, including N.J.A.C. 6A:14-2.5(a)1, merely required districts to use a variety of assessment tools and strategies to gather relevant functional and development information, which tools were to be administered by trained and knowledgeable personnel in accord with the instructions. Moreover, because N.J.A.C. 6A:14-3.4(f)4 permitted but did not require a district to administer a technology evaluation, the parents' claims to the contrary lacked merit. Finally, in a similar vein, while N.J.A.C. 6A:14-3.7(c)1 provided for parental input into an individualized education plan, the district was not required to acquiesce to all of the requests contained therein, and the parents' claim that the district's failure to do so afforded grounds for relief was rejected. *T.W. and L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ.*, OAL Dkt. No. EDS 12854-12, AGENCY REF. No. 2013-18770, 2014 N.J. AGEN LEXIS 80, Final Decision (February 4, 2014).

District provided ample evidence that the escalating behavioral and academic problems a 15-year-old student was experiencing, including the increased number and nature of reported disciplinary incidents and failing seventh grade, strongly suggested problems which could only have been resolved through a comprehensive evaluation of the student in order to address his educational needs; thus, where the student's mother refused to cooperate in scheduling and producing the student for the requested assessments, the district was obligated to request an order directing the mother to consent to and cooperate in scheduling and completing the four assessments comprising the initial evaluation. *Pemberton Twp. Bd. of Educ. v. J.L. ex rel. A.M.*, OAL Dkt. No. EDS 7823-10, 2010 N.J. AGEN LEXIS 432, Final Decision (August 11, 2010).

Educational testing, evaluations, and reports on a 17-year-old learning disabled student were appropriately conducted, comprehensive, and properly assessed where the record revealed that the student's per-

formance in the classroom was age appropriate, his grade 11 GPA was 3.3053, he made the honor roll regardless of his learning disability, and he was on the path towards graduation from high school in 2011. *North Brunswick Twp. Bd. of Educ. v. R.M. ex rel. N.M.*, OAL Dkt. No. EDS 03145-10, 2010 N.J. AGEN LEXIS 368, Final Decision (July 27, 2010).

District's petition to evaluate a student for eligibility for special education related services was granted where the witnesses' unanimous opinion was that the student could learn but needed special attention in order to learn; the record also showed that the student had outbursts, aggressive behavior, and low-level academic functioning. *Elizabeth Bd. of Educ. v. S.R. ex rel. M.R.*, OAL Dkt. No. EDS11130-08, 2008 N.J. AGEN LEXIS 1174, Final Decision (November 21, 2008).

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).

School district was ordered to release student records even after the parent withheld her consent to the release of such records; placement of a 15-year-old in an out-of district educational facility had to be effectuated if the student was to receive a FAPE but no potential out-of-district school would consider accepting him as a student without first having an opportunity to review his student records. *Asbury Park Bd. of Educ. v. M.J. ex rel. S.J.*, OAL DKT. EDS 6265-06, 2006 N.J. AGEN LEXIS 743, Final Decision (August 31, 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).

District's IEP was not sufficiently individualized to deal with a multiply disabled student's hearing impairment in conjunction with her



autism because there was an absence of any assessment directly related to her hearing impairment; the evaluations had to assess all areas of suspected disability, serve the dual purpose of identifying disabilities and establishing the foundation for the types of services that the child would need, and had to be sufficiently comprehensive to identify all of a child's needs with respect to special education and related services. *F.D. ex rel. I.D. v. Ramsey Bd. of Educ.*, OAL Dkt. No. EDS 9938-04, 2005 N.J. AGEN LEXIS 489, Final Decision (August 29, 2005).

Psychiatric evaluation granted due to student's distorted behavior. *Hillside Board of Education v. B.L.*, 97 N.J.A.R.2d (EDS) 128.

Assaultive student ordered to undergo evaluation even if parent refuses to give consent. *Bloomfield Board of Education v. R.G.*, 97 N.J.A.R.2d (EDS) 121.

Denial of special education evaluation denied. *K.S. v. Parsippany-Troy Hills Board of Education*, 97 N.J.A.R.2d (EDS) 60.

Minor child's violence in school warranted evaluation. *Roselle Board of Education v. M.W.*, 97 N.J.A.R.2d (EDS) 38.

High school student's poor performance and possession of knife in school warranted evaluation. *Sterling Board of Education v. M.C.*, 97 N.J.A.R.2d (EDS) 37.

Student's poor progress warranted evaluation despite parents' opposition. *East Brunswick Board of Education v. A.M.*, 97 N.J.A.R.2d (EDS) 14.

Student's poor performance warranted evaluation of student's eligibility for special education. *Weehawken Board of Education v. E.C.*, 97 N.J.A.R.2d (EDS) 2.

Nonconsensual special education evaluation was appropriate where first grade student had difficulty finishing tasks and had engaged in inappropriate behavior since entering kindergarten. *Wayne Township v. T.F. and M.F.*, 96 N.J.A.R.2d (EDS) 336.

Student's failing grades, truancies, and disciplinary suspensions supported special education evaluation. *C.B. v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDS) 333.

Noncustodial parent lacked authority to consent to special education evaluation. *K.W. v. Sparta Board of Education*, 96 N.J.A.R.2d (EDS) 286.

Initial comprehensive special education evaluation of high school student suffering from anorexia nervosa was appropriate where student would otherwise be too old to register for high school courses. *J.C. v. Elmwood Park Board of Education*, 96 N.J.A.R.2d (EDS) 208.

Child study team evaluation of student failing all classes and exhibiting behavioral problems was ordered despite lack of parental consent. *Freehold Regional Board of Education v. M.DeL.*, 96 N.J.A.R.2d (EDS) 191.

Evaluation of student as perceptually impaired with Attention Deficit Disorder was appropriate. *Millville Board of Education v. J.J.*, 96 N.J.A.R.2d (EDS) 182.

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.

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

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

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

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

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

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

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

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

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

Student with drug problem not permitted to matriculate; Child Study Team given opportunity to conduct evaluation. *P.F. v. North Hunterdon Board of Education*, 94 N.J.A.R.2d (EDS) 213.

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

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

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

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

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

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

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

Immediate evaluation of ten-year-old student ordered; student displayed educational deficiencies, poor behaviors and increased distracti-

bility; complete absence of parental cooperation. East Brunswick Board of Education v. K.P., 93 N.J.A.R.2d (EDS) 77.

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

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

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

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

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

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

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

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

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

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

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

### **6A:14-3.5 Determination of eligibility for special education and related services**

(a) When an initial evaluation is completed for a student age three through 21, a meeting according to N.J.A.C. 6A:14-2.3(k)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation and information that will be used for a determination of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described in N.J.A.C. 6A:14-2.3(k)1.

(b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading, including the essential components of

reading instruction, or math or due to limited English proficiency.

(c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.

1. "Auditorily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditorily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

i. "Deafness"—The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.

ii. "Hearing impairment"—An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.

2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

3. "Intellectually disabled" means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

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

- (1) The quality and rate of learning;
- (2) The use of symbols for the interpretation of information and the solution of problems; and
- (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate intellectual disability" means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

- (1) The ability to use symbols in the solution of problems of low complexity;
- (2) The ability to function socially without direct and close supervision in home, school and community settings; and
- (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.

i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.

ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).

5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

- i. An inability to learn that cannot be explained by intellectual, sensory or health factors;
- ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- iii. Inappropriate types of behaviors or feelings under normal circumstances;
- iv. A general pervasive mood of unhappiness or depression; or
- v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiply disabled" corresponds to "multiply handicapped" and "multiple disabilities," and means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities includes cognitively impaired-blindness, cognitively impaired-orthopedic impairment, etc. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiply disabled. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." Multiply disabled does not include deaf-blindness.

7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

8. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.

9. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart

condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

10. "Preschool child with a disability" corresponds to preschool handicapped and means a child between the ages of three and five who either:

i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below, and requires special education and related services. When utilizing a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.

- (1) Physical, including gross motor, fine motor and sensory (vision and hearing);
- (2) Intellectual;
- (3) Communication;
- (4) Social and emotional; and
- (5) Adaptive; or

ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.

11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.

12. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;

- (4) Listening comprehension;
- (5) Mathematical calculation;
- (6) Mathematical problem solving;
- (7) Written expression; and
- (8) Reading fluency.

ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.

iii. The term severe discrepancy does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.

iv. The district shall, if it utilizes the severe discrepancy methodology, adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

13. "Traumatic brain injury" corresponds to "neurologically impaired" and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

14. "Visually impaired" corresponds to "visually handicapped" and means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

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

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

In (c)8, inserted "that may be" following "disability" in the first sentence.

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), deleted a reference to adult students; in (c)2, added a fifth sentence; in (c)4, substituted references to assessment for references to evaluation; and rewrote (c)8 and the introductory paragraph of (c)11.

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

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

In (a), inserted "and information that will be used for a determination" following "documentation", and added "not less than 10 calendar days prior to the meeting" following "parent".

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), updated the N.J.A.C. references; in (b), inserted "including the essential components of reading instruction,"; rewrote (c).



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

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

In (c)3, substituted "‘Intellectually disabled’" for "‘Cognitively impaired’" corresponds to 'mentally retarded' and"; in (c)3i, substituted "‘Mild intellectual disability’" for "‘Mild cognitive impairment’" corresponds to 'educable' and"; in (c)3ii, substituted "‘Moderate intellectual disability’" for "‘Moderate cognitive impairment’" corresponds to 'trainable' and"; in (c)3iii, substituted "‘Severe intellectual disability’" for "‘Severe cognitive impairment’" corresponds to 'eligible for day training' and"; and rewrote (c)10.

#### Case Notes

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

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

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

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. Klagesholz*, 771 A.2d 603 (2001).

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. Klagesholz*, 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).

Though a school district violated the rights of the parents of a child who met the criteria for classification as learning-disabled within the meaning of N.J.A.C. 6A:14-3.5(c) by failing to provide them with a draft Individualized Education Plan (IEP) for the child in a timely and appropriate manner and the district should have begun providing appropriate special education services to the child earlier than such services actually were provided, those inadequacies were not such that it could be said that the child had been denied a free, appropriate public education (FAPE) within the meaning of N.J.A.C. 6A:14-2.7(k). Moreover, while the district did not establish that the parents, by refusing to consent to the initial IEP, in effect prevented the district from providing a FAPE by reason of N.J.A.C. 6A:14-3.7(a) and N.J.A.C. 6A:14-2.3(c), there was a similar lack of evidence supporting the parents' claim that they were entitled to be reimbursed for the cost incurred by the parents in placing the child in an out-of-district summer program. *K.O. and A.O. ex rel J.O v. North Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 09449-12, 2013 N.J. AGEN LEXIS 216, Final Decision (August 21, 2013).

District presented sufficient evidence to support its decision not to classify a four-year-old child as a disabled preschooler because the fact that the child was diagnosed with Asperger's syndrome did not auto-

matically warrant a conclusion that the child was in need of special education, especially in light of the fact that he was cognitively advanced and had only mild issues with motor skills and social interaction with peers. He interacted with adults but not children, and he had an obsession with fans but not at the level where the fixation could not be redirected. *A.P. ex rel. J.F.-P. v. Clifton Bd. of Educ.*, OAL Dkt. No. EDS 07554-09, 2010 N.J. AGEN LEXIS 302, Final Decision (June 25, 2010).

Seventeen-year-old student who suffered from Raynaud's disease, ADHD, and periodic anxiety and depression was not eligible for special education services where she did not have a learning disability but only needed additional time to complete certain tasks. *N.N. ex rel. E.N. v. Ocean City Bd. of Educ.*, OAL Dkt. No. EDS 448-10, 2010 N.J. AGEN LEXIS 140, Final Decision (March 31, 2010).

Declassification of a student formerly deemed specifically learning disabled was proper where the district relied on the NJ Estimator Program 3.0, which failed to show that the student had a 95 percent chance of a severe discrepancy between her achievement and her intellectual ability, as well as evaluations performed by outside professionals, and the student's in-class performance, as observed and reported upon by her teachers. *M.B. ex rel. J.B. v. South Orange-Maplewood Bd. of Educ.*, OAL Dkt. No. EDS 12730-08, 2009 N.J. AGEN LEXIS 580, Final Decision (September 2, 2009).

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

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).

Parents of a child with severe nut allergies successfully demonstrated that they were entitled to relief in the form of transportation to and from school and school-related activities on a regular education school bus and with regular education school children and, on such a bus, the provision of an aide or other person available to administer an EpiPen to prevent anaphylactic shock. *J.B. ex rel. J.B. Jr. v. Manalapan-Englishtown Reg'l Bd. of Educ.*, OAL DKT. EDS 676-07, 2007 N.J. AGEN LEXIS 180, Final Decision (April 13, 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-M 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 N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.

(c) When developing the IEP, the IEP team shall:

1. Consider the strengths of the student and the concerns of the parents for enhancing the education of their child;

2. Consider the academic, developmental and functional needs of the student;

3. Consider the results of the initial evaluation or most recent evaluation of the student and, as appropriate, the student's performance on any general State or districtwide assessment;

4. Consider the consistency of the location of the services for students who are prone to regression due to frequent changes in location;

5. In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior;

6. In the case of a student with limited English proficiency, consider the language needs of the student as related to the IEP;

7. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, and current and projected needs for instruction in Braille that such instruction is not appropriate;

8. Consider the communication needs of the student;

9. In the case of a student who is deaf or hard of hearing consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of opportunities for direct instruction in the student's language and communication mode;

10. Consider whether the student requires assistive technology devices and services.

- i. The district board of education shall ensure that assistive technology devices or assistive technology services, or both, as defined in the IDEA, are made available to a student with a disability if required as part of the student's special education, related services or supplementary aids and services.

- ii. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team determines that the student needs access to those devices in order to receive a free, appropriate public education;

11. Beginning at age 14, or younger if determined appropriate by the IEP team, consider the need for consultation from the Division of Vocational Rehabilitation Services, Department of Labor and Workforce Develop-



ment and other agencies providing services for individuals with disabilities; and

12. Review the preschool day to determine what accommodations and modifications may be required to allow the child to participate in the general education classroom and activities.

(d) The IEP may be amended without a meeting of the IEP team as follows:

1. The IEP may be amended if the parent makes a written request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees;

2. The school district provides the parent a written proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;

3. All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district; and

4. If an IEP is amended pursuant to this subsection, such amendment shall not affect the requirement in (i) below that the IEP team review the IEP at a meeting annually, or more often if necessary.

(e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

1. A statement of the student's present levels of academic achievement and functional performance, including, but not limited to:

i. How the student's disability affects the student's involvement and progress in the general curriculum; or

ii. For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student specific, functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.

3. Such measurable annual goals shall include benchmarks or short-term objectives related to:

i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and

ii. Meeting each of the student's other educational needs that result from the student's disability;

4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aids and services shall be based, to the extent practicable, on peer reviewed research. A statement of the program modifications or supports for school personnel that shall be provided for the student:

i. To advance appropriately toward attaining the measurable annual academic and functional goals;

ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and

iii. To be educated and participate with other students with disabilities and nondisabled students;

5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting;

6. An explanation of the extent, if any, to which the student shall not participate with nondisabled students in the general education class and in extracurricular and nonacademic activities;

7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.

i. If the IEP team determines that the student shall not participate in a particular general Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student according to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student;

8. A statement which specifies the projected date for the beginning of the services and modifications described in (e)4 above, and the anticipated frequency, location, and duration of those services and modifications;

9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school graduation requirements, the statement shall include:

i. A rationale for the exemption or modification based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.11; and

ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.

10. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;

11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:

i. A statement of the student's strengths, interests and preferences;

ii. Identification of a course of study and related strategies and/or activities that:

(1) Are consistent with the student's strengths, interests, and preferences; and

(2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living;

iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development; and

iv. As appropriate, a statement of any needed interagency linkages and responsibilities;

12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of those elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals.

i. The transition services as defined in IDEA shall consist of a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and be based on the individual student's 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 8, 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 partic-

ipants. 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.

Notice of readoption with technical change.

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

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

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

Added new (c)4; recodified former (c)4 through (c)11 as (c)5 through (c)12; and in (f), substituted "8" for "7", and inserted a comma following "15".

#### 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).

A disabled minor was not entitled to an out-of-district placement despite claims that he was being bullied, that teachers yelled at him and that he was subjected to name calling. The absence of a severe clinical

diagnosis, such as a social or emotional disorder, or any serious medical conditions meant that an out-of-district placement is not justified. To the extent that the minor's due process claim alleged procedural violations of federal laws guaranteeing a "free and appropriate education" (FAPE), those claims were meritless because the minor's absence from school was a result of his refusal to attend. Moreover, the district provided home instruction notwithstanding the fact that the district's investigation of the alleged "bullying" did not reveal conduct that met district criteria for the same. Moreover, to the extent that a substantive due process claim was being made, per N.J.A.C. 6A:14-2.7(k), the record supported the conclusion that the minor had received a FAPE because Individual Education Plans that met the standards in N.J.A.C. 6A:14-3.7(e)2 were adopted but could not be implemented due to a lack of cooperation on the part of the minor and his representative. M.K. ex rel. J.P. v. Hawthorne Bd. of Educ., OAL DKT. NO. EDS 18538-13, AGENCY DKT. NO. 2014/20536, 2014 N.J. AGEN LEXIS 450, Final Decision (July 30, 2014).

Though the notice given by a school district to the parent of an autistic child was inadequate under federal law and related state law including N.J.A.C. 6A:14-2.3(f)1 and that notice thus constituted a procedural violation of the governing law, the evidence did not show that the requisite prejudice or harm resulted from the deficient notice as required by 20 U.S.C.S. § 1415(f)(3)(E)(ii), nor did the procedurally defective notice "significantly impede" the parent's opportunity to participate in the decision-making process relative to the child's Individual Educational Plan. Moreover, while the action of the district in unilaterally altering the wording of goals and objectives in the November 2012 IEP, along with the additional of related services, constituted a procedural violation because the parent was not provided with a copy of the amended IEP as required by N.J.A.C. 6A:14-3.7(d), neither the amendment of the IEP nor the implementation of the amended IEP rose to the level of denying a free appropriate public education to the child. S.S. ex rel. N.S. v. Brick Twp. Bd. of Educ., OAL DKT. NO. EDS 10871-13, AGENCY DKT. NO. 2013 19890, 2014 N.J. AGEN LEXIS 449, Final Decision (July 29, 2014).

Guardian prevailed on a petition challenging a school district's compliance with applicable state and federal law with respect to the educational needs of a minor who was diagnosed with an autism spectrum disorder (ASD). The district failed to carry its burden to establish, by a preponderance of the evidence, that the placement of the child would provide a meaningful educational benefit because its sole witness on this issue, the child's case manager, did not establish that the district had complied with all of the procedural requirements, that the child had been assessed in all areas of suspected disability in accord with N.J.A.C. 6A:14-3.1(a) and N.J.A.C. 6A:14-2.5(b); and that the district had based its placement decision on a proper IEP as required by N.J.A.C. 6A:14-3.7. Specifically, the district was required to determine what, if any, additional data was needed to determine the present levels of academic achievement and functional performance and educational and related developmental needs of the student and how they should appropriately be addressed in the student's IEP in accord with N.J.A.C. 6A:14-3.8(b)2ii-iii. R.M. ex rel. T.S. v. Matawan-Aberdeen Reg'l Bd. of Educ., OAL Dkt. No. EDS 11443-12, AGENCY Dkt. No. 2013 18732, 2014 N.J. AGEN LEXIS 202, Final Decision (April 28, 2014).

An Administrative Law Judge concluded that the parents of a 10 year old learning-disabled child were entitled to reimbursement for the cost of the child's attendance at an out-of-district private school notwithstanding that that school, though accredited, was not "approved" by the Department of Education for the education of learning disabled children. Once it was determined that the public school was not providing the child with a free and appropriate public education within the meaning of 20 U.S.C.S. § 1412 and N.J.A.C. 6A:14-1.1, the central inquiry was whether the substitute placement—here, a private school—conferred a meaningful educational benefit on the child. That the methods used in the public school were not effective was evident in the child's steady performance decline from second to third grade and his increased anxiety and emotional frustration as the work became more advanced. The IEP developed per N.J.A.C. 6A:14-3.7(b) that was in place during the last year of his public school attendance education did little more than repeat the same goals and objectives from the two prior years, without offering a way to address problems that had manifested



themselves in the intervening time. Moreover, the record showed that the student's performance was regressing, not progressing. Since the program used by the public school was not effective in educating the student due to his unique language-processing disorder and since it appeared that the program in the out-of-district private school was better adapted to the student's needs, the placement was appropriate even if it did not meet the standards provided by the district board of education per N.J.A.C. 6A:14-2.10(b) and the parents were entitled to reimbursement of the resulting expenses. *S.S. and H.S. ex rel. P.S. v. Colts Neck Twp. Bd. of Educ.*, OAL Dkt. No. EDS 13645-12, AGENCY Dkt. No. 2013 18904, 2014 N.J. AGEN LEXIS 81, Final Decision (February 14, 2014).

An Administrative Law Judge (ALJ) concluded that there was no merit to a claim by the parents of a disabled student that the school district had violated their son's rights when it did not undertake a full triennial evaluation and opted to only obtain a speech evaluation. The record established that the parents in fact waived the triennial evaluation. Given the waiver, N.J.A.C. § 6A:14-3.8 did not require the district to provide a full evaluation. Nor did the district violate the rights of the parents or the student by refusing to utilize a specific evaluator because the regulations, including N.J.A.C. 6A:14-2.5(a)1, merely required districts to use a variety of assessment tools and strategies to gather relevant functional and development information, which tools were to be administered by trained and knowledgeable personnel in accord with the instructions. Moreover, because N.J.A.C. 6A:14-3.4(f)4 permitted but did not require a district to administer a technology evaluation, the parents' claims to the contrary lacked merit. Finally, in a similar vein, while N.J.A.C. 6A:14-3.7(c)1 provided for parental input into an individualized education plan, the district was not required to acquiesce to all of the requests contained therein, and the parents' claim that the district's failure to do so afforded grounds for relief was rejected. *T.W.*

and *L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ.*, OAL Dkt. No. EDS 12854-12, AGENCY REF. No. 2013-18770, 2014 N.J. AGEN LEXIS 80, Final Decision (February 4, 2014).

Though a school district violated the rights of the parents of a child who met the criteria for classification as learning-disabled within the meaning of N.J.A.C. 6A:14-3.5(c) by failing to provide them with a draft Individualized Education Plan (IEP) for the child in a timely and appropriate manner and the district should have begun providing appropriate special education services to the child earlier than such services actually were provided, those inadequacies were not such that it could be said that the child had been denied a free, appropriate public education (FAPE) within the meaning of N.J.A.C. 6A:14-2.7(k). Moreover, while the district did not establish that the parents, by refusing to consent to the initial IEP, in effect prevented the district from providing a FAPE by reason of N.J.A.C. 6A:14-3.7(a) and N.J.A.C. 6A:14-2.3(c), there was a similar lack of evidence supporting the parents' claim that they were entitled to be reimbursed for the cost incurred by the parents in placing the child in an out-of-district summer program. *K.O. and A.O. ex rel. J.O. v. North Brunswick Twp. Bd. of Educ.*, OAL Dkt. No. EDS 09449-12, 2013 N.J. AGEN LEXIS 216, Final Decision (August 21, 2013).

IEP of a seven-year-old autistic student should not have been modified to provide for the reduction or elimination of speech/language services and occupational therapy where the district failed to set forth evidence that those services were no longer needed or were needed in a lesser amount than prior years. The services were critical for the student, who had severe developmental delays in speech and was easily distracted. *J.W. ex rel. B.W. v. Tinton Falls Bd. of Educ.*, OAL Dkt. No. EDS 8125-09, 2010 N.J. AGEN LEXIS 458, Final Decision (June 28, 2010).

Disabled student's IEPs were not deficient because, even though many of the teacher remarks in the progress notes were subjectively based, the goals and objective in the IEPs were not so vague that they were meaningless; rather, they contained detailed statements of annual goals that were measurable. Because the student had become partially proficient in the majority of the objectives contained within the IEPs and also mastered the majority of targets contained in the objectives, the district provided the student with a FAPE reasonably calculated to provide significant learning and meaningful benefit and the parents were not entitled to reimbursement following their unilateral placement of the student in a different program. *J.M. ex rel. L.M. v. Wayne Twp. Bd. of Educ.*, OAL Dkt. No. EDS 12465-08, 2010 N.J. AGEN LEXIS 243, Final Decision (May 6, 2010).

During the development of an IEP, parents cannot compel a school district to incorporate specific programs or methodologies, but may suggest that the IEP include certain programs or services, and the school district must give those suggestions due consideration; however, the ultimate decision regarding the composition of the IEP lies with the school district, and if the parents believe that the school district failed to include its suggestions, and that this failure resulted in the denial of a FAPE, then the parents may file a due process petition challenging the IEP. *K.R. ex rel. H.R. v. Union Beach Borough Bd. of Educ.*, OAL Dkt. No. EDS 10364-07 and EDS 8323-08, 2009 N.J. AGEN LEXIS 255, Final Decision (April 28, 2009).

Where the evidence showed that an eight-year-old autistic student needed discrete trial instruction in a small classroom setting because a regular education classroom was too large and fast paced for her, the district properly considered the student's potential and educational needs and her IEP allowing for very limited time in a regular education classroom was reasonably calculated to provide her with a meaningful educational benefit in the least restrictive environment. *D.B. ex rel. H.B. v. Gloucester Twp. Bd. of Educ.*, OAL Dkt. No. EDS 10522-07, 2008 N.J. AGEN LEXIS 1264, Final Decision (September 12, 2008).

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 appraised 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).

Parents of an autistic child were granted compensatory education and a revised IEP for their son after evidence demonstrated that the IEP failed to provide an effective behavior intervention plan to address the student's behaviors that were interfering with his ability to learn and failed to set forth clear benchmarks, communication methodologies, and parental training strategies; additionally, the district failed to employ qualified staff to provide the student with particular educational services. *Z.J. ex rel. L.J. v. Audubon Bd. of Educ.*, OAL DKT. EDS 6203-06, 2006 N.J. AGEN LEXIS 833, Final Decision (October 23, 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).

Petitioner, a 20-year-old adult who was eligible for special education, failed to establish that he was entitled to compensatory or continuing education and related services where he received passing grades in all his classes in both his junior and senior years and earned sufficient credits to graduate. There was simply no support for petitioner's claim that he received no meaningful education benefit. *J.T. v. Winslow Twp. Bd. of Educ.*, OAL DKT. EDS 8071-04, 2006 N.J. AGEN LEXIS 331, Final Decision (May 1, 2006).

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).

Parents of a 13-year-old multiply disabled student were not entitled to an out-of-district placement, reimbursement for evaluations, or compensatory education where they failed to present evidence that their son's IEP was inappropriate or that his school had deprived him of a FAPE in the least restrictive environment. The school district offered

substantial and credible testimony from two teachers who had the opportunity to observe the student on a daily basis, while the parents introduced no evidence as to the inappropriateness of the IEP, made no observations on the student in the classroom, nor provided any testimony as to the specifics of an out-of-district placement. *R.M. ex rel. N.M. v. North Brunswick Twp. Bd. of Educ.*, OAL DKT. EDS 4743-05, 2005 N.J. AGEN LEXIS 704, Final Decision (December 8, 2005).

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).

District's IEP was not sufficiently individualized to deal with a multiply disabled student's hearing impairment in conjunction with her autism because there was an absence of any assessment directly related



to her hearing impairment; the evaluations had to assess all areas of suspected disability, serve the dual purpose of identifying disabilities and establishing the foundation for the types of services that the child would need, and had to be sufficiently comprehensive to identify all of a child's needs with respect to special education and related services. *F.D. ex rel. I.D. v. Ramsey Bd. of Educ.*, OAL Dkt. No. EDS 9938-04, 2005 N.J. AGEN LEXIS 489, Final Decision (August 29, 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 physical 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 four-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 six-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 (c) 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 student's 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. Notice of readoption with technical change. See: 45 N.J.R. 1909(c).

#### 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.

Guardian prevailed on a petition challenging a school district's compliance with applicable state and federal law with respect to the educational needs of a minor who was diagnosed with an autism spectrum disorder (ASD). The district failed to carry its burden to establish, by a preponderance of the evidence, that the placement of the child would provide a meaningful educational benefit because its sole witness on this issue, the child's case manager, did not establish that the district had complied with all of the procedural requirements, that the child had been assessed in all areas of suspected disability in accord with N.J.A.C. 6A:14-3.1(a) and N.J.A.C. 6A:14-2.5(b); and that the district had based its placement decision on a proper IEP as required by N.J.A.C. 6A:14-3.7. Specifically, the district was required to determine what, if any, additional data was needed to determine the present levels of academic achievement and functional performance and educational and related developmental needs of the student and how they should appropriately be addressed in the student's IEP in accord with N.J.A.C. 6A:14-3.8(b)2ii-iii. *R.M. ex rel. T.S. v. Matawan-Aberdeen Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 11443-12, AGENCY Dkt. No. 2013 18732, 2014 N.J. AGEN LEXIS 202, Final Decision (April 28, 2014).

An Administrative Law Judge (ALJ) concluded that there was no merit to a claim by the parents of a disabled student that the school district had violated their son's rights when it did not undertake a full triennial evaluation and opted to only obtain a speech evaluation. The record established that the parents in fact waived the triennial evaluation. Given the waiver, N.J.A.C. § 6A:14-3.8 did not require the district to provide a full evaluation. Nor did the district violate the rights of the parents or the student by refusing to utilize a specific evaluator because the regulations, including N.J.A.C. 6A:14-2.5(a)1, merely required districts to use a variety of assessment tools and strategies to gather relevant functional and development information, which tools were to be administered by trained and knowledgeable personnel in accord with the instructions. Moreover, because N.J.A.C. 6A:14-3.4(f)4 permitted but did not require a district to administer a technology evaluation, the parents' claims to the contrary lacked merit. Finally, in a similar vein, while N.J.A.C. 6A:14-3.7(c)1 provided for parental input into an individualized education plan, the district was not required to acquiesce to all of the requests contained therein, and the parents' claim that the district's failure to do so afforded grounds for relief was rejected. *T.W. and L.W. ex rel. E.W. v. Parsippany-Troy Hills Bd. of Educ.*, OAL Dkt. No. EDS 12854-12, AGENCY REF. No. 2013-18770, 2014 N.J. AGEN LEXIS 80, Final Decision (February 4, 2014).

School district complied with a 17-year-old learning disabled student's periodic reevaluations where those evaluations were held annually, were conducted by people who were trained in their field, included input from the student's parents, and the results comported with the

student's performance levels. *North Brunswick Twp. Bd. of Educ. v. R.M. ex rel. N.M.*, OAL Dkt. No. EDS 03145-10, 2010 N.J. AGEN LEXIS 368, Final Decision (July 27, 2010).

District was entitled to emergent relief in order to conduct a comprehensive psychiatric diagnostic assessment of a 12-year-old multiply disabled student because, although her parents and the district disagreed on whether her behaviors had escalated, enough evidence existed to warrant at least a psychiatric component or an early re-evaluation in order to facilitate the district's ability to provide FAPE for the student through an appropriate placement. *River Edge Bd. of Educ. v. E.F. ex rel. V.F.*, OAL Dkt. No. EDS 05680-09, 2009 N.J. AGEN LEXIS 313, Order for Emergent Relief (June 1, 2009).

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).

Parents of a disabled child were ordered to allow the child to participate in an educational assessment, a psychiatric assessment, and an occupational therapy assessment to be conducted as a part of an early re-evaluation where the district's ability to meet its obligation to the child had been impeded by the inability of the parties to function in the spirit of cooperation. *Ramsey Bd. of Educ. v. L.E. ex rel. M.S.*, OAL Dkt. No. EDS 7943-06, 2007 N.J. AGEN LEXIS 121, Final Decision (March 8, 2007).

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, and 14 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.

(m) When a student with a disability transfers from a non-public 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).

Notice of readoption with technical change.

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

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

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

Deleted (f)1.

## 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).

In filing its challenge to a charter school's recommended placement for a disabled student, the district of residence was required to follow the procedural requirements of N.J.A.C. 6A:23A-15.4 and immediately request a copy of the student's records to determine whether a less-restrictive program could have met his needs. Although the regulation did not speak in the imperative, and stated that the resident district "may" request records, the provision should have been read in concert with N.J.A.C. 6A:14-4.1(g)3, which addressed programming for children new to a district, and clearly required a new district to take "reasonable steps to promptly obtain the student's records." L.Y. ex rel. J.Y. v. Bayonne Bd. of Educ., OAL Dkt. No. EDS 11766-09 and EDS 11764-09, 2010 N.J. AGEN LEXIS 438, Final Decision (August 25, 2010).

N.J.A.C. 6A:14-4.1(k), which provides that a parent must be given the opportunity to observe a proposed educational placement prior to implementation of the IEP, must be read to apply to outside consultants retained by the parents; the presence of an express provision pertaining to the parent should not be read as an exclusion of all others. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

Parents of a multiply disabled 16-year-old student were entitled to emergent relief and the district was ordered to place the student in his original out-of-district placement pending a plenary hearing because the in-district program offered by the district was not "comparable" to the program provided by the out-of-district school; although it was clear that the district made a good faith effort to provide the student with an appropriate program in the least restrictive environment, the in-district program was just not the equivalent of the program he was originally receiving. M.H. ex rel. S.H. v. Northern Burlington Co. Regional Bd. of Educ., OAL Dkt. No. EDS 303-09, 2009 N.J. AGEN LEXIS 77, Decision on Emergent Relief (February 9, 2009).

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).

Parents of an autistic child who sought payment for an extended school year program were entitled to reimbursement based on the fact that, the moment that the child became a resident of the school district, he was entitled to a free, appropriate public education, despite the fact that the child arrived in the district without an IEP in place. The notice requirements in N.J.A.C. 6A:14-2.10 simply did not apply to the particular factual situation. J.M. ex rel. R.M. v. Mountain Lakes Bd. of Educ., OAL Dkt. No. EDS 7173-06, 2006 N.J. AGEN LEXIS 1039, Final Decision (December 7, 2006).

District failed to comply with the requirements of N.J.A.C. 6A:14-4.1(g)3 with respect to a multiply disabled student's interim educational program because, even though the district was aware that her initial placement was not consistent with available information, it did not take effective measures to correct this situation; the student began her time at the school on August 2004, but the district did not present an IEP until December 3, 2004, which was an unreasonable delay. F.D. ex rel. I.D. v. Ramsey Bd. of Educ., OAL Dkt. No. EDS 9938-04, 2005 N.J. AGEN LEXIS 489, Final Decision (August 29, 2005).

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. Klageholz*, 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).

Student's current Individual Education Plan, which provided him with home instruction, did not provide the student with a free appropriate public education. Along the continuum of placements defined in N.J.A.C. 6A:14-4.3, home instruction was one of the most restrictive, and the district's contention that a number of out-of-district placements were appropriate was clear evidence that extended placement on home instruction was not appropriate. The district failed to prove that home instruction was the least restrictive environment under N.J.A.C. 6A:14-4.2 that would provide the student with a meaningful educational benefit. *K.G. ex rel. S.T. v. Shore Reg'l High School. Bd. of Educ.*, OAL DKT. No. EDS 2636-14, 2014 N.J. AGEN LEXIS 155, Final Decision (April 1, 2014).

While the district made a good-faith effort to mainstream a student with severe dyslexia and ADHD by keeping her in mainstream classes except for the two areas in which her learning disabilities were the most pronounced, the district did little more to help her keep pace with mainstream students beyond books on tape. Given the severity of the student's disability, she was unable to make meaningful progress and the district's program was not the least restrictive environment appropriate for her. *J.M. ex rel. M.M. v. Morris School District Bd. of Educ.*, OAL Dkt. No. EDS 03830-10, 2010 N.J. AGEN LEXIS 625, Final Decision (November 24, 2010).

Although parents contended that the Stepping Stones Program did not provide the least restrictive environment for their autistic child who was receiving preschool instruction where she was not being educated with

non-disabled peers and where her communication and aggression issues were not adequately improving, it was determined that the district provided the child with an IEP that specifically addressed her needs; the district was not obligated to maximize a disabled student's potential, but merely must confer meaningful benefit. The child's disability rendered her incapable of being satisfactorily educated in a regular classroom, and she would not benefit from the modeling behavior of her peers if she were educated with them, but would greatly benefit from the intense one-on-one ABA instruction delivered close to her home by the Stepping Stones Program. *L.G. ex rel. E.G. v. Fair Lawn Bd. of Educ.*, OAL Dkt. No. EDS 5077-08, 2009 N.J. AGEN LEXIS 1009, Final Decision (October 5, 2009).

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).

Where an 11-year-old autistic student made progress in academics and self-care during the school year and learned to generalize outside the school setting, it was clear that the district offered FAPE and that a full-time residential placement in a remote, isolated restricted environment was not a necessary ingredient for the student to learn; although the student displayed significant behavioral issues at home when alone with his parents, the district could not have been held financially responsible for a residential placement to correct home social and behavior problems. *C.B. ex rel. S.B. v. West Windsor-Plainsboro Regional Bd. of Educ.*, OAL Dkt. No. EDS 8854-06, 2007 N.J. AGEN LEXIS 683, Final Decision (October 17, 2007).

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).

Parents of a 13-year-old multiply disabled student were not entitled to an out-of-district placement, reimbursement for evaluations, or compensatory education where they failed to present evidence that their son's IEP was inappropriate or that his school had deprived him of a FAPE in the least restrictive environment. The school district offered substantial and credible testimony from two teachers who had the opportunity to observe the student on a daily basis, while the parents introduced no evidence as to the inappropriateness of the IEP, made no observations on the student in the classroom, nor provided any testimony as to the specifics of an out-of-district placement. *R.M. ex rel. N.M. v. North Brunswick Twp. Bd. of Educ.*, OAL DKT. EDS 4743-05, 2005 N.J. AGEN LEXIS 704, Final Decision (December 8, 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 (DDD) 1.

Out-of-state placement found most appropriate for mentally retarded child until specialized day school and community residential placements

can be arranged. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (EDS) 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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).

Student's current Individual Education Plan, which provided him with home instruction, did not provide the student with a free appropriate public education. Along the continuum of placements defined in N.J.A.C. 6A:14-4.3, home instruction was one of the most restrictive, and the district's contention that a number of out-of-district placements were appropriate was clear evidence that extended placement on home instruction was not appropriate. The district failed to prove that home instruction was the least restrictive environment under N.J.A.C. 6A:14-4.2 that would provide the student with a meaningful educational benefit. *K.G. ex rel. S.T. v. Shore Reg'l High School Bd. of Educ.*, OAL DKT. No. EDS 2636-14, 2014 N.J. AGEN LEXIS 155, Final Decision (April 1, 2014).

Proper standard to be used when emergency relief per N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1 is sought in connection with a proposed change, by a school district, in the placement of a student under an agreed-upon Individualized Education Program (IEP) is that which is provided in the "stay put" provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400. Where a school board and the parents of the student had agreed on the placement of the student in a private program and the student in fact had been so placed, that placement was properly maintained under the "stay put" provisions of IDEA during the pendency of any litigation and notwithstanding any claim by a county office of education that the placement did not satisfy the so-called "Naples" requirements, and such placement was properly maintained until any issue regarding the program, whether raised under N.J.A.C. 6A:14-4.3(b)10 or N.J.A.C. 6A:14-6.5 or otherwise, was determined. *N.W. and R.W. ex rel. M.W., v. Lakewood Twp. Bd. of Educ.*, OAL Dkt. No. EDS 9524-13, AGENCY Dkt. No. 2014-200007, 2013 N.J. AGEN LEXIS 202, Final Decision on Motion for Emergent Relief (July 16, 2013).

District provided a seven-year-old autistic student with a FAPE and parents were not entitled to reimbursement for their unilateral placement for the 2010 extended school year (ESY) because, in preparing the student's IEP, the district properly considered his potential and educational needs, which did not include an ESY for social or behavioral issues. While it was possible that attendance at the camp may have furthered the goals included in the student's IEP, that did not by itself show that an ESY was required absent a showing of the potential for regression during the summer months. *D.W. ex rel. B.W. v. Deptford Twp. Bd. of Educ.*, OAL Dkt. No. EDS 8008-10, 2010 N.J. AGEN LEXIS 683, Final Decision (December 23, 2010).

Nine-year-old student diagnosed with having ADHD, sensory integration disorder, cluttering, abnormal auditory perception, and dyspraxia should have received an extended school year program where the district's own witnesses testified that he needed services that included: occupational therapy; social skills training; speech language related therapies; and academics. *R.S. ex rel. R.S. v. Shrewsbury Borough Bd. of Educ.*, OAL Dkt. No. EDS 297-10 and EDS 366-10 (Consolidated), 2010 N.J. AGEN LEXIS 414, Final Decision (August 17, 2010).

Mother of a five-year-old student who was previously classified as "a preschool child with a disability" was not entitled to emergent relief in the form of an extended school year where she failed to show that the IEP's proposal of 30 minutes per week of speech-language therapy during the summer, as opposed to two hours per day that he received the previous two summers, would have resulted in irreparable harm. *M.H. ex rel. G.H. v. Jackson Twp. Bd. of Educ.*, OAL Dkt. No. EDS 7215-10,

2010 N.J. AGEN LEXIS 324, Order Denying Emergent Relief (July 19, 2010).

Parents were not entitled to emergent relief for their six-year-old autistic child in the form of an extended school year (ESY) at the facility of their choice because the district's proposed ESY program was in accordance with the student's IEP. The student's year long program was primarily in a self-contained setting with provisions for social interactions and, although more restrictive than the ESY program that the parents favored, the district's proposed ESY was not inconsistent with the student's school year program. *F.D. ex rel. N.D. v. Marlboro Twp. Bd. of Educ.*, OAL Dkt. No. EDS 6579-10, 2010 N.J. AGEN LEXIS 301, Order Denying Emergent Relief (July 2, 2010).

District's action changing a student's placement to Fourteenth Avenue School was consistent with its obligation to educate him in the least restrictive environment; the uncontroverted testimony reflected that all components of his IEP could be delivered in an in-district placement, which was closer to home, and which permitted him to interact with typical peers. The parents did not challenge the appropriateness of the Fourteenth Avenue School placement, but were simply reluctant to change a placement that was comfortable for their son, and in which he progressed. *M.P. ex rel T.P. v. Newark School Distr.*, OAL Dkt. No. EDS 11557-09, 2009 N.J. AGEN LEXIS 773, Final Decision (October 22, 2009).

Parents of a disabled high schooler neither claimed nor provided any evidence that the student would have regressed in his acquired skills and knowledge going from his junior year into his senior year if he did not receive extended school year programming; the parents' concerns over an anticipated burden of taking two English courses simultaneously during the senior year in the absence of summer school simply was not what the law regarding an ESY was intended to address. *C.C. ex rel. B.H. v. Spotswood Bd. of Educ.*, OAL Dkt. No. EDS11270-08, 2008 N.J. AGEN LEXIS 1175, Final Decision (November 21, 2008).

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).

Parents of an autistic child were granted compensatory education and a revised IEP for their son after evidence demonstrated that the IEP failed to provide an effective behavior intervention plan to address the student's behaviors that were interfering with his ability to learn and failed to set forth clear benchmarks, communication methodologies, and parental training strategies; additionally, the district failed to employ qualified staff to provide the student with particular educational services. *Z.J. ex rel. L.J. v. Audubon Bd. of Educ.*, OAL DKT. EDS 6203-06, 2006 N.J. AGEN LEXIS 833, Final Decision (October 23, 2006).

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 four-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 six-year-old, neurologically impaired student was in self-contained neurologically impaired special education class at in-district school. *A.F. v. Roselle Board of Education*, 92 N.J.A.R.2d (EDS) 118.

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

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

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

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

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

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.

Placement of hearing-impaired child; local elementary school appropriate. *A.M. v. Madison Board of Education*, 92 N.J.A.R.2d (EDS) 51.

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.

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.

Private school, and not proposed public school placements, provided appropriate education in least restrictive environment for severely mentally retarded student classified as educable mentally retarded. *Jo.M. and S.M. on Behalf of Their Daughter, J.M. v. Monmouth Regional Board of Education*, 92 N.J.A.R.2d (EDS) 9.

Although petitioners sought private school placement for their seven year old, classified as emotionally disturbed, the OAL judge determined that a self-contained, age appropriate, emotionally disturbed placement in respondent's school system was the appropriate placement for the child. *B.P. and E.P. Parents of J.P. v. City of Newark Bd. of Educ.*, 9 N.J.A.R. 190 (1986).

Petitioners' action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for their 13 year old son, classified as neurologically impaired, denied; finding that local board had attempted to provide a free appropriate education, with personalized instruction and sufficient support services to allow the child to benefit educationally. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

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).

Parents not entitled to reimbursement for private school tuition following unilateral withdrawal of pupil from special education program. *Robinson v. Goodwin*, 1975 S.L.D. 6.

#### 6A:14-4.4 Program criteria: speech-language services

(a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:

1. Speech-language services shall be given individually or in groups.

i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.

2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

#### 6A:14-4.5 Program criteria: supplementary aids and services

(a) Supplementary aids and services are provided in the general education classroom to enable students with dis-

abilities to be educated to the maximum extent appropriate with nondisabled peers.

(b) A teacher aide may provide supplementary support to a student or students with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:

1. Prompting, cueing and redirecting student participation;
2. Reinforcing of personal, social, behavioral, and academic learning goals;
3. Organizing and managing materials and activities; and
4. Implementation of teacher-designed follow-up and practice activities.

(c) Supplementary services as described in (b) above shall be provided individually or in groups according to the numbers for in-class resource programs.

(d) The district board of education shall provide the teacher aide and the appropriate general or special education teaching staff time for consultation on a regular basis, which shall be set forth in policies adopted by the district board of education.

(e) Consultation as a service on behalf of a student with disabilities or a group of students with disabilities may be provided by a related services provider, a teacher of students with disabilities or a child study team member to the general education teacher and/or the teacher aide. Such consultation shall be specified in each student's IEP. The frequency and duration of the consultation(s) shall be indicated in the IEP. Consultation may include, but is not limited to, the following:

1. The development and demonstration of techniques and strategies;
2. Data collection on the effectiveness of the techniques and strategies; and
3. Development of positive behavioral supports.

Amended by 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).

Section was "Program criteria: supplementary instruction". Rewrote the section.

#### Case Notes

Contrary to the findings of the New Jersey State Department of Education, Division of Finance, a private school for disabled children was not properly ordered to refund, as non-allowable costs, tuition payments to public school sending districts to the extent that those payments included costs associated with salary and fringe benefits for two "music therapists" and one "coordinator of instruction." Given the actual duties and responsibilities associated with the position of "music therapist," that position was more akin to the position of "teacher aide" or "paraprofessional" within the meaning of governing regulations than it was to the position of a teacher, and an employee who was in the position of "music therapist" was not required to have an instructional

teacher certificate. Similarly, the actual duties and responsibilities associated with the position of "coordinator of instruction" of the private school were such that the holder of that position was not required to possess an administrative certificate with a supervisory endorsement. *Cerebral Palsy League of Union Cnty. v. N.J. Dep't of Educ.*, OAL DKT. NO. EDU11301-07, AGENCY DKT. NO. 138-5/07, 2010 N.J. AGEN LEXIS 1037, Initial Decision (June 14, 2010).

Replacement instruction more appropriate than in-class support for dyslexic student. *S.D. v. Washington Township (Gloucester County) Board of Education*, 96 N.J.A.R.2d (EDS) 377.

Reimbursement of parent for costs of private tutoring for neurologically impaired child denied. *N.B. West Orange Board of Education*, 94 N.J.A.R.2d (EDS) 86.

Reimbursement of past contributions toward costs of residential placement of autistic child and set-aside of lien filed against property for additional unpaid amounts was not appropriate. *S.P. v. Division of Youth and Family Services*, 94 N.J.A.R.2d (DYF) 5.

School district was not liable for tutoring expenses for special education student. *L.M. v. Cranbury Board of Education*, 94 N.J.A.R.2d (EDS) 4.

Third-grade student would be classified as perceptually impaired, and Individualized Education Program retaining her in regular classes with two hours of resource room would be implemented. *North Brunswick Board of Education v. S.S.*, 93 N.J.A.R.2d (EDS) 27.

#### 6A:14-4.6 Program criteria: supplementary instruction and resource programs

(a) Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.

(b) Supplementary instruction in (a) above shall be provided individually or in groups according to the chart at (m) below. Supplementary instruction may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. Instruction in more than one subject may be provided in a pull-out program of supplemental instruction.

(c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.

(d) In-class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.

(e) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide instruction as defined in (i) and (j) below. In-class resource teachers may provide support and replacement

instruction at the same time in accordance with the group size limits for in-class support in (m) below. Pull-out support and pull-out replacement shall not be provided by the same teacher at the same time.

(f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.

(g) A teacher of supplementary instruction and a resource program teacher shall be provided time on a regular basis for consultation with appropriate general education teaching staff.

(h) An in-class resource program or an in-class program of supplementary instruction may be provided up to the student's entire instructional day. At the elementary level, replacement pull-out resource classes may be provided for up to no more than three subject areas per day. At the secondary level, replacement pull-out resource classes may be provided for up to the entire instructional day.

(i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.

(j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.

(k) The age span in an approved single-subject pull-out resource program shall not exceed three years in elementary programs, and shall not exceed four years in secondary programs.

(l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.

(m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

| <u>Resource and<br/>Supplementary<br/>Instruction</u> | <u>Preschool/Elementary</u> |                          | <u>Secondary</u> |                          |
|-------------------------------------------------------|-----------------------------|--------------------------|------------------|--------------------------|
|                                                       | <u>No Aide</u>              | <u>Aide<br/>Required</u> | <u>No Aide</u>   | <u>Aide<br/>required</u> |
| In-class                                              | 8                           | —                        | 10               | —                        |
| Pull-out support<br>and supplemental<br>instruction   |                             |                          |                  |                          |
| Single subject                                        | 6                           | 7 to 9                   | 9                | 10 to 12                 |
| Multiple subject                                      | 6                           | 7 to 9                   | 6                | 7 to 9                   |

| <u>Replacement<br/>Resource</u> | <u>Preschool/Elementary</u> |                          | <u>Secondary</u> |                          |
|---------------------------------|-----------------------------|--------------------------|------------------|--------------------------|
|                                 | <u>No Aide</u>              | <u>Aide<br/>Required</u> | <u>No Aide</u>   | <u>Aide<br/>Required</u> |
| Pull-out                        |                             |                          |                  |                          |
| Single subject                  | 6                           | 7 to 9                   | 9                | 10 to 12                 |

(n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and ten at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.

(o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be increased in accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.

(p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.

(q) For the 2006-2007 and 2007-2008 school years, multiple-subject replacement pull-out resource programs may be operated in accordance with the provisions of this section for a maximum of four students in any such program at both the elementary and secondary levels. The four student limit shall not be excepted pursuant to N.J.A.C. 6A:14-4.9. Beginning July 1, 2008, multiple-subject pull-out resource programs shall no longer be operated.

Amended by R.1998 d.527, effective November 2, 1998.  
See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

In (i), inserted "only at the preschool or elementary school level" following "provided", and substituted "three students with disabilities" for "five students with disabilities for the preschool, elementary or secondary level" at the end; and added (k).  
Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).



Amended (f); added new (j); and recodified former (j) and (k) as (k) and (l).

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), 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. Section was "Program criteria: resource programs".

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

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

Deleted (k)1.

#### Case Notes

In order to provide educational services in a resource room setting, the resource program teacher must be certified by the New Jersey Department of Education as a "teacher of the handicapped". Dyslexic student's reading instructor held that certification and, as such, was fully qualified to provide instruction to student; school district had no additional obligations under the IDEA or New Jersey 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).

#### 6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation

(a) A special class program shall serve students who have similar intensive educational, behavioral, and other needs related to their disabilities in accordance with their individualized education programs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:

1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;

2. The age span in special class programs shall not exceed four years in elementary programs, and shall not exceed four years in secondary programs; and

3. A kindergarten shall not be approved as a special class program.

(b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.

(c) The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe cognitive disabilities or severe to profound cognitive disabilities.

(d) Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.

(e) Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as set forth below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

| Program                               | I  | II                                                   | III                                                         |
|---------------------------------------|----|------------------------------------------------------|-------------------------------------------------------------|
|                                       |    | Instructional Size:<br>No Classroom Aide<br>Required | Instructional Size:<br>Classroom Aide<br>Required           |
| Auditory impairments                  | 8  | 8                                                    | 9 to 12                                                     |
| Autism <sup>1</sup>                   | 3  | 3                                                    | 4 to 6<br>7 to 9<br>(Secondary only;<br>Two aides required) |
| Behavioral disabilities               | 9  | 9                                                    | 10 to 12                                                    |
| Cognitive <sup>2</sup>                |    |                                                      |                                                             |
| Mild                                  | 12 | 12                                                   | 13 to 16                                                    |
| Moderate                              | 10 | 10                                                   | 11 to 13                                                    |
| Severe                                | 3  | 3                                                    | 4 to 6<br>7 to 9<br>(Two aides required)                    |
| Learning and/or language disabilities |    |                                                      |                                                             |
| Mild to moderate                      | 10 | 10                                                   | 11 to 16                                                    |
| Severe                                | 8  | 8                                                    | 9 to 12                                                     |
| Multiple disabilities                 | 8  | 8                                                    | 9 to 12                                                     |
| Preschool disabilities <sup>3</sup>   | —  | —                                                    | 1 to 8<br>9 to 12<br>(Two aides required)                   |
| Visual impairments                    | 8  | 8                                                    | 9 to 12                                                     |

<sup>1</sup>A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.

<sup>2</sup>A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.

<sup>3</sup>A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.

(f) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.

(g) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.

(h) Vocational education programs shall meet the following criteria:

1. For the student placed in a vocational program outside of the local district, responsibility shall be as follows:

i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;

ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the IEP decisions; and

2. In vocational shop and related academic programs, class sizes shall be as follows:

i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted according to N.J.A.C. 6A:14-4.9. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:

- (1) The nature and degree of the student's educationally disabling condition;
- (2) The interests, aptitudes and abilities of the student;
- (3) The functional level of the student;
- (4) The employment potential of the student;
- (5) The type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

(i) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor and Workforce Development, 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).

Notice of readoption with technical change.

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

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

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

In the introductory paragraph of (a), inserted a comma following "behavioral"; in (a)2, substituted the first occurrence of "four" for "three", and inserted "and" at the end; and deleted (a)2i.

#### 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)iv, 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).

School district properly ordered homebound instruction for 60 days based on urgent circumstances after it was discovered that a student had a threatening photograph on his confiscated cellular phone and had also left a suicide note; the student's state of mind needed to be fully evaluated prior to his re-entry into the district and maintaining a self-contained placement was substantially likely to result in injury to the student or to others. *E.B. ex rel. E.A. v. Lower Cape May Regional Bd. of Educ.*, OAL Dkt. No. EDS 8923-07, 2007 N.J. AGEN LEXIS 743, Decision on Emergent Relief (November 20, 2007).

Parent of a multiply disabled 17-year-old who functioned at a pre-K level was entitled to 20 weeks of compensatory education to be provided to the child by a teacher certified to teach the disabled and trained to work with a child with significant behavioral issues where the parent demonstrated that the school board did not provide a suitable education and related services from which the child could derive a meaningful educational benefit. The district's decision to place the student on a home instruction program, rather than to focus efforts on solving the underlying behavior issue which interfered with his placement ignored the fact that the home instruction plan was woefully inadequate for the student's needs and not in conformance with the IEP still in place. *M.S. ex rel. K.E. v. Camden City Bd. of Educ.*, OAL Dkt. EDS 698-07, 2007 N.J. AGEN LEXIS 473, Final Decision (August 3, 2007).

School board's petition to change the status of a student as a special education student in its middle school to a student receiving homebound instruction was granted because the student's conduct was explosive and unpredictable, including attacking classmates in the classroom, in the hallways, in the playground and in the school bus; the student was a danger to herself, to her fellow students, and to staff. *Piscataway Bd. of Educ. v. L.D.*, OAL Dkt. No. EDS 885-99 and EDS 891-99 (Consolidated), 2005 N.J. AGEN LEXIS 721, Final Decision Granting Application for Emergent Relief (November 11, 2005).

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. 6A:5 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.

Notice of readoption with technical change.

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

#### **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 the student by requesting mediation or a due process hearing prior to graduation.

3. In accordance with N.J.A.C. 6A:14-3.8(d), a reevaluation shall not be required.

4. When a student graduates or exceeds the age of eligibility, the student shall be provided a written summary of his or her academic achievement and functional performance prior to the date of the student's graduation or the conclusion of the school year in which he or she exceeds the age of eligibility. The summary shall include recommendations to assist the child in meeting his or her postsecondary goals.

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

1. If the school the student is attending declines to issue a diploma to the student, the district of residence board of education shall issue the student a diploma if the

student has satisfied all State and local graduation requirements, as specified in the student's IEP.

(d) If a district board of education grants an elementary school diploma, a student with a disability who fulfills the requirements of his or her IEP shall qualify for and receive a diploma.

(e) Students with disabilities who meet the standards for graduation according to this section shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

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

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

Amended (a); added a new (b); and recodified former (b) through (d) as (c) through (e).

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

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

Recodified from N.J.A.C. 6A:14-4.12 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 the introductory paragraph of (b) and (b)3, updated N.J.A.C. references; added (b)4 and (c)1; in (d), inserted "and receive". Former N.J.A.C. 6A:14-4.11, Statewide assessment, recodified to N.J.A.C. 6A:14-4.10.

### Case Notes

ALJ concluded that the opinions offered by petitioner's experts were unsupported by credible evidence and that petitioner failed to establish that the school board improperly awarded him a high school diploma. *B.C. v. River Dell Reg'l High School Dist. Bd. of Educ.*, OAL Dkt. No. EDS 1245-07, 2008 N.J. AGEN LEXIS 346, Final Decision (May 29, 2008).

School district was not required to fund additional full year at out-of-district school for special education student who could meet school district's graduation requirements by attending summer school. *T.R. v. Mt. Olive Board of Education*, 96 N.J.A.R.2d (EDS) 293.

Emergency relief request to allow classified student, who had been barred from graduation ceremonies for assaulting teacher, to participate in those ceremonies was denied. *C.T. v. Clifton Board of Education*, 96 N.J.A.R.2d (EDS) 212.

Emergency relief request to allow student with excessive absences to participate in graduation ceremonies was denied. *M.P. v. Hackettstown Board of Education*, 96 N.J.A.R.2d (EDS) 210.

Special education student not receiving diploma would be allowed to participate in graduation ceremonies where individualized education plan specifically provided for participation. *K.M. v. Northern Valley Regional High School District and Ridgewood Board of Education*, 96 N.J.A.R.2d (EDS) 197.

Special education student was properly denied graduation and senior privileges due to her poor attendance and failure to earn required number of academic credits. *A.S. v. Wayne Board of Education*, 96 N.J.A.R.2d (EDS) 162.

### 6A:14-4.12 (Reserved)

Recodified to 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).

Section was "Graduation".

## SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

### 6A:14-5.1 General requirements

(a) Each district board of education, independently or through joint agreements, shall employ or contract with child study teams as set forth in N.J.A.C. 6A:14-3.1(b), speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

1. Joint agreements for child study team services may be entered into with local education agencies including other local school districts, educational services commissions, jointure commissions and county special services school districts.

2. A district board of education may supplement child study team services with additional teams through contracts or joint agreements.

3. If a vacancy occurs on a child study team(s) because of an absence of a member or members of the team(s) for an identified period of time, the district may, for the duration of any such vacancy, contract with a clinic or agency, an individual or another district board of education for those services that were provided by the absent team member(s).

(b) When a district board of education provides its educational program through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship pursuant to N.J.S.A. 18A:38-1 et seq., when all the students of one or more grades of a district board of education attend school(s) operated by other district boards of education, the receiving district board of education shall be responsible for determining the eligibility of those students and developing and implementing their IEPs.

2. When individual students are placed by a district board of education in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to students with disabilities.

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed in (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private profes-

sional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline under which they are providing services, provide services under this subsection if certified through the emergency certification process.

1. For public school students:

i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5;

ii. Child study team services to supplement existing local district services;

iii. Related services;

(1) Certified occupational therapy assistants and others employed in a supportive role to licensed and, where applicable, certified providers of related services, shall work under the supervision of an appropriately licensed and, where applicable, certified provider of such services.

(2) Physical therapy assistants shall work in the presence and under the supervision of a certified physical therapist.

(3) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a bachelors degree in education, psychology or a related field from an accredited institute of higher education and shall work under the supervision of certified district board of education personnel.

iv. Home instruction; and

v. Speech-language services provided by a speech-language specialist when a district or private school for students with disabilities is unable to hire sufficient staff to provide the service.

2. For students attending nonpublic schools, the district in which the facility is located may contract for the following services:

i. Evaluation, determination of eligibility, classification and the development of a service plan;

ii. Supplementary instruction, speech-language services and home instruction for students determined eligible for such services; and

iii. English as a second language according to N.J.A.C. 6A:15 and compensatory education according

to N.J.S.A. 18A:46A-2e for students eligible for such services.

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

1. Notice of the intent to purchase services shall include the proposed terms of the contract;
2. The notice shall be effective for one year; and
3. Districts are not required to provide prior notice to the Department of Education when contracting for an independent child study team evaluation in accordance with N.J.A.C. 6A:14-2.5.

(e) District boards of education may contract for medical diagnostic services with medical clinics and agencies approved by another New Jersey State agency or appropriate state agencies outside of New Jersey.

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), added a second sentence in the introductory paragraph.

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

In (c)2iii, updated N.J.A.C. reference.

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

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

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).

Rewrote the section.

Notice of readoption with technical change.

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

#### Case Notes

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)1iv, 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).

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).

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

Evidence supported in-district placement of neurologically impaired student; parents' preference for out-of-district placement only one factor in decision. *S.A. v. Board of Education of Township of North Brunswick*, 92 N.J.A.R.2d (EDS) 220.

#### 6A:14-5.2 Approval procedures for clinics or agencies

(a) For the purposes of approval by the Department of Education, a clinic or agency shall consist of three or more professionals. Initial approval of a clinic or agency shall require, but not be limited to, submission and evaluation of the following:

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county, or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;

3. A list of professional staff who will provide services. The list shall verify each individual's certification and license, if a certification and/or license is required for the discipline in which services are being provided, and the function he or she shall fulfill;

i. Professional staff employed by a clinic or agency who work full time for a district board of education, approved private school for students with disabilities or nonpublic school shall not provide service for the clinic or agency during the hours of that individual's public school or, as applicable, approved private school or nonpublic school employment;

ii. An employee of a district board of education, approved private school for students with disabilities or nonpublic school shall not provide service as an employee of a clinic or agency to a student who is the responsibility of his or her employing district board of education or enrolled in his or her approved private school for students with disabilities or nonpublic school;

4. Assurance that the clinic or agency has conducted the criminal history check of each professional according to N.J.S.A. 18A:6-7.1;

i. The clinic or agency shall submit to the Department of Education and maintain documentation of the information regarding the criminal history record check;

5. Assurance that the facility or facilities in which the services are being provided meet applicable building and other regulatory standards;

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

7. Assurance of a system for the collection, maintenance, confidentiality and access of student records which is according to N.J.A.C. 6A:32; and

8. Assurance of the maintenance of a log, which includes, but is not limited to:

i. A list of services provided;

ii. The date, time and location of the services provided; and

iii. The names of the professional staff providing each service.

(b) Any clinic or agency denied approval by the Department of Education may appeal the approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6A:3. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

(c) An approved clinic or agency may amend the services provided or the location of its facilities by obtaining prior

written approval from the Office of Special Education Programs.

1. To amend the services provided, the agency or clinic shall submit the following:

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

ii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required and the function he or she will fulfill; and

iii. Assurance that the criminal history record check has been conducted according to N.J.S.A. 18A:6-7.1.

2. To amend the location of the facilities, the agency or clinic shall submit an assurance that the facility or facilities in which the services are to be provided meet applicable building and other regulatory standards as required in (a)5 above.

(d) When a professional staff member leaves or a new professional staff member is hired, the approved clinic or agency shall provide the Office of Special Education Programs written notification within seven calendar days of the change.

(e) Failure to comply with any requirement of this section may result in the loss of approval.

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

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

In (b), changed N.J.A.C. 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 (a)3; in (a)4i, inserted "submit to the Department of Education and"; in (a)7, updated the N.J.A.C. reference; in (a)8iii, substituted "each service" for "the services"; in (c)2, added "as required in (a)5 above" at the end; in (e), substituted "any requirement" for "the requirements".

#### Case Notes

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

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

#### SUBCHAPTER 6. REQUIREMENTS FOR SERVICES IN NONPUBLIC SCHOOLS

##### 6A:14-6.1 Equitable participation under IDEA Part B

(a) The board of education of the district of attendance, as required by Federal law and regulation under Part B of the IDEA, shall provide a genuine opportunity for the equitable



participation of students with disabilities who are enrolled in nonpublic schools or early childhood programs by their parents.

1. The district of attendance shall make the final decisions with respect to the services to be provided to eligible students with disabilities enrolled in nonpublic schools or early childhood programs.

(b) The district of attendance shall spend an amount of money equal to a proportionate amount of Federal funds available under Part B of the IDEA for the provision of services to students with disabilities who are attending nonpublic schools.

(c) The district of attendance, after timely and meaningful consultation with representatives of nonpublic schools, shall undertake a child find process in accordance with IDEA and its implementing regulations to determine the number of parentally placed children with disabilities attending nonpublic schools located within the district.

1. As part of the child find process, the district board of education shall consult with private school representatives and representatives of parents of parentally placed nonpublic school children with disabilities in the design and development of special education and related services for such children.

i. After consulting with representatives of participating private schools, the district board of education shall obtain a signed, written affirmation that the consultation as required by IDEA, 20 U.S.C. §§1400 et seq., and its implementing regulations at 34 CFR §§300.1 et seq. occurred.

ii. If a district is unable to obtain such signed, written affirmation, it shall forward documentation of the consultation process to the office of special education programs.

iii. Nonpublic school officials may file a complaint with the Department of Education if they believe the consultation process was not meaningful and timely.

(1) The complaint shall set forth the basis for the alleged noncompliance.

(2) The district board of education shall provide documentation of its consultation process to the Department within 30 days of notification of the filing of a complaint with respect to the consultation process.

(3) The Department shall then render a determination of whether the consultation was meaningful and, if appropriate, order any necessary corrective action.

(4) Appeals of a determination of the Department of Education with respect to the consultation process under this subsection shall be made to the Secretary of the United States Department of Education pursuant

to procedures set forth in IDEA, 20 U.S.C. §§1400 et seq., and its implementing regulations at 34 CFR §§300.1 et seq.

(d) Services pursuant to this section may be provided by district board of education personnel, or through contracts with individuals or approved clinics or agencies. In addition, services provided pursuant to this section shall be secular, neutral and non-ideological.

(e) 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 or early childhood programs by their parents.

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.

(f) If a nonpublic school student with a disability will receive special education or related services from the district of attendance, the district shall:

1. Initiate and conduct meetings according to N.J.A.C. 6A:14-2.3(k) to develop, review and revise a service plan for the student.

i. For the services provided by the public education agency, the service plan for a student with a disability enrolled in a nonpublic school or early childhood program 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. The transition requirements described in N.J.A.C. 6A:14-3.7(e) shall be included only when the responsible district is providing transition services to the student; and

2. Ensure that a representative of the nonpublic school or early childhood program attends each meeting. If the representative of the nonpublic school cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

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; added (a)1; in (c), added 1 and 2; and added (d).

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).

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).

Local educational agency where the private school is located is responsible for providing the student with special educational services, not the district where the parents are domiciled; therefore, while a student was enrolled in a school in Connecticut, the school district in New Jersey had no responsibility to provide her with special services under Individuals with Disabilities Education Act. R.J. ex rel. R.J. v. Milburn Twp. Bd. of Educ., OAL Dkt. No. EDS 11838-07, 2009 N.J. AGEN LEXIS 124, Final Decision (February 4, 2009).

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:23A-16 through 22.

(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".

Notice of readoption with technical change.

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

#### 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:9B-6.5, N.J.A.C. 6A:32-4.7 and this chapter;

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

7. The nonpublic school provides services which are nonsectarian;

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

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

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

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

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

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

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

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

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

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

Notice of readoption with technical change.

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

Administrative change.

See: 46 N.J.R. 1743(a).

#### 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.

Bloomfield Township Board of Education was ordered to place a student who was eligible for special education and related services at an approved non-public special education program that the district asserted would deliver a free appropriate public education. Despite the parents' rejection of that placement, the administrative law judge concluded that the program would offer the student a highly structured therapeutic educational setting close to home. Placement in a non-approved school was not appropriate because the Board could not certify under N.J.A.C. 6A:14-6.5(b) that a suitable approved placement could not be provided. M.S. and P.S. ex rel. E.S. v Bloomfield Township Board of Education, OAL Dkt. No. EDS 10468-13, 2013 N.J. AGEN LEXIS 245, Final Decision (September 16, 2013).

Proper standard to be used when emergency relief per N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1 is sought in connection with a proposed change, by a school district, in the placement of a student under an agreed-upon Individualized Education Program (IEP) is that which is provided in the "stay put" provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400. Where a school

board and the parents of the student had agreed on the placement of the student in a private program and the student in fact had been so placed, that placement was properly maintained under the "stay put" provisions of IDEA during the pendency of any litigation and notwithstanding any claim by a county office of education that the placement did not satisfy the so-called "Naples" requirements, and such placement was properly maintained until any issue regarding the program, whether raised under N.J.A.C. 6A:14-4.3(b)10 or N.J.A.C. 6A:14-6.5 or otherwise, was determined. *N.W. and R.W. ex rel. M.W., v. Lakewood Twp. Bd. of Educ.*, OAL Dkt. No. EDS 9524-13, AGENCY Dkt. No. 2014-200007, 2013 N.J. AGEN LEXIS 202, Final Decision on Motion for Emergent Relief (July 16, 2013).

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

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

Even if parents had succeeded in showing that their son had not received FAPE at his old high school, their choice of alternative placement for their son was not appropriate because it was an out-of-state boarding school not approved by the New Jersey Department of Education as a special education school and was staffed predominantly by teachers not certified to teach high school, much less special education; additionally, the very things the parents complained were not being provided to their son at the original high school were not provided at the boarding school. *J.A. ex rel. J.A. v. Mountain Lakes Bd. of Educ.*, OAL Dkt. No. EDS 9732-04, 2005 N.J. AGEN LEXIS 559, Final Decision (September 27, 2005).

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.

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

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.

#### Law Review and Journal Commentaries

Out-Of-District Placement for the Special Needs Child. Michaelene Loughlin, Sherry Chachkin, 222 N.J.L.J. 43 (2003).

## SUBCHAPTER 7. RECEIVING SCHOOLS

### 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. Klagholtz*, 771 A.2d 603 (2001).

### 6A:14-7.1 General requirements

(a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services) and public college operated programs for students with disabilities. Receiving schools shall obtain prior written approval from the Department of Education to provide pro-

grams for students with disabilities through contracts with district boards of education.

1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education in this subchapter.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

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

(c) Programs for students with disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding age range and class size shall be requested by the district of residence board of education and determined pursuant to N.J.A.C. 6A:14-4.9. District boards of education and providers of programs under this subchapter shall maintain documentation of this approval.

(d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.

(e) Annually, providers of programs pursuant to this subchapter shall prepare and submit a report, in a format provided by the Department of Education, to the Department of Education through the county office. The report shall include, but not be limited to, the number of enrolled students by age, race, ethnicity, and additionally, the number of students whose placements were terminated during the previous school year, and, when known, the subsequent placement for each student whose placement was terminated.

(f) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey students.

(g) The residential component of an approved private school for students with disabilities shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the state in which the school is located.

(h) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in or shall not be employed by any approved private school for students with disabilities which serves students with disabilities placed by that district board of education.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (c)1; added new (e) and recodified former (e) through (g) as new (f) through (h); throughout the section, substituted "students with disabilities" for "the disabled".  
Notice of readoption with technical change.  
See: 45 N.J.R. 1909(c).

#### Case Notes

Authority to contract for speech therapy services. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

Department's revocation of a school's status as an approved private school for the disabled was proper where the parties' settlement agreement provided that the school had until March 31, 2008, to comply with the regulatory requirement for an average daily enrollment of 24 public school placement students and the school did not meet the requirement; the agreement was entered into freely by both parties after conferring before the ALJ, the terms of the settlement were clear, and there was no evidence that the Department entered into the agreement in bad faith (adopting with modification 2009 N.J. AGEN LEXIS 326). *Kentwood Academy v. Davy* (On Remand), OAL Dkt. No. EDU 7165-08, 2009 N.J. AGEN LEXIS 638, Final Decision (July 27, 2009).

Despite the fact that a private non-approved educational institution was not on the list of private day or residential schools that had been approved by the State of New Jersey, the school district in which a special education student resided was liable for the costs incurred for home instruction of that student that was provided by that institution. There was no question that this particular program most fully met the student's needs; the only reason for the district's refusal to pay for the services was that the providing institution was not on the state's approved list. Because the focus of the relevant statutory scheme was not on the form but on the substance of the program needed for a special education student, the fact that all of the parties agreed that the current program was providing the student with a free and appropriate public education was determinative, and the school district was liable for the cost thereof. *Golden Door Charter Sch. v. State Operated Sch. Dist. of Jersey City, Hudson Cnty.*, OAL DKT. NO. EDU01169-06, AGENCY DKT. NO. 352-12/05, 2007 N.J. AGEN LEXIS 1272, Initial Decision (January 30, 2007).

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).

Public school unable to compel private school to re-admit expelled student. *H.F. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 101.

#### 6A:14-7.2 Approval procedures to establish a new receiving school

(a) Prior to the establishment of a receiving school for students with disabilities, an application shall be submitted to the Department of Education according to the following schedule:

1. The applicant shall submit a description of the program and services to be offered which shall include, but not be limited to:

- i. The educational philosophy of the program;
- ii. Characteristics of the program, which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session;
- iii. The curriculum and materials including a description of how the core curriculum content standards will be implemented;
- iv. A mechanism for evaluating student progress and program efficacy; and
- v. The organizational structure, including projected number of personnel by title, job function and personnel requirements, including certification;

2. A survey of need indicating the number, age range, types of students with disabilities to be served by the proposed programs/services and the reasons these students cannot be served in the resident district, supported by documentation from local public school districts. Documentation of local school districts surveyed shall be included. The Department of Education shall determine if the program to be provided by the receiving school is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the needs assessment.

i. Any appeal of a decision to deny approval may be made to the Commissioner of Education in accordance with N.J.A.C. 6A:3;

3. Additionally, each approved private school for students with disabilities shall submit:

- i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, The Individuals with Disabilities Education Act (20 U.S.C. §§1400 et seq.) and the Rehabilitation Act of 1973 (U.S.P.L. 93-112 Section 504, 29 U.S.C. §794a).
- ii. The administrative policies and procedures of the school;
- iii. An assurance that necessary emergency procedures will be followed;
- iv. A copy of the approval of the facility by the issuing agency, including a certificate of occupancy and certification of health and fire approval;
- v. A copy of the certificate of incorporation;
- vi. Staffing information which shall include a list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required, the function he or she will perform, and

that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual; and

vii. A projected budget in accordance with N.J.A.C. 6A:23A-18.

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)2, changed N.J.A.C. 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.

Notice of readoption with technical change.

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

#### Case Notes

Exception would not be made for applicant seeking approval for a private school for the disabled, where certain potential student referrals were not received by the Office of Special Education Programs (OSEP) until after the Office had notified the applicant that its application was eight short of the minimum requisite number, necessitating rejection; to compel the OSEP to accord such preferential treatment to one applicant over others would serve to compromise the integrity of the whole application process. *Y.E.S. Academy v. N.J. State Dep't of Educ., Office of Special Educ. Programs*, OAL Dkt. No. EDU 4665-07, Commissioner's Decision (August 15, 2007).

#### 6A:14-7.3 Amendment procedures for receiving schools

(a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided or the location of its facilities by obtaining prior written approval from the Department of Education through its county offices of education.

1. To amend the policies, procedures, nature and scope of the services provided, or increase or decrease the services provided, the approved receiving school shall submit the following:

- i. A copy of the revised policy and/or procedure;
- ii. A revised description of the scope and nature of the services to be offered according to N.J.A.C. 6A:14-7.2(a)3iii(4); and
- iii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual and the function he or she shall perform.

2. To amend the location of its facilities, an approved private school for students with disabilities shall submit a copy of the valid health, fire, HVAC inspections, occupancy and, if applicable sewerage plant.

3. In accordance with N.J.A.C. 6A:23-4.3(a)1, if an approved private school for students with disabilities seeks to expand the school and its program by opening an additional location, the school must submit an application for approval as a new private school for students with disabilities in accordance with this subchapter and receive



such approval prior to operating an approved private school in the new location.

(b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for students with disabilities, the approved private school shall provide written notification to the Department of Education through the county office within seven calendar days of the change.

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)1iii, inserted “, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual”; in (a)2, substituted “students with disabilities” for “the disabled” and “HVAC” for “boiler”; added (a)3; in (b), substituted “students with disabilities” for “the disabled”.

#### **6A:14-7.4 Annual procedures for private schools for students with disabilities**

(a) Annually, each approved private school for students with disabilities shall submit fiscal information according to N.J.A.C. 6A:23 to the Office of Finance.

(b) Annually, each approved private school for students with disabilities shall obtain valid certificates of fire inspection and if applicable, health, HVAC inspections, and, if applicable, sewerage plant. Such certificates shall be maintained and shall be available upon request for review by the Department of Education through the county office of education.

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), 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).

Section was “Annual procedures for private schools for the disabled”. Substituted “students with disabilities” for “the disabled” throughout; in (b), substituted “HVAC inspections,” for “boiler inspections, occupancy”.

#### **Case Notes**

Action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for neurologically impaired child, denied. *M.B. Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

School board’s failure to follow proper placement procedures deprived parents of free choice in making decision for non-public cost placement under former N.J.A.C. 6:28-4.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

#### **6A:14-7.5 Responsibilities of district boards of education**

(a) The educational program of a student with a disability provided through contractual agreements as described in N.J.A.C. 6A:14-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the development and annual review of the IEP and the reevaluation of the student.

At least annually, the district board of education shall monitor the implementation of the IEP.

1. For students with disabilities placed in programs described in N.J.A.C. 6A:14-7.1(a), representative(s) of the program and the district board of education shall participate in meeting(s) according to N.J.A.C. 6A:14-2.3(k)2.

(b) When a student with a disability is placed in a receiving school as described in N.J.A.C. 6A:14-7.1(a), the district board of education shall provide written notification to the Department of Education through the county office within 10 calendar days of the placement. Such notification shall include a copy of the student’s IEP.

1. A district board of education shall place a student with a disability in a receiving school only when it can assure that the student’s IEP can be implemented in that setting.

i. The IEP of a student placed in a receiving school shall only be amended by the IEP team of the district board of education.

2. Prior to placement in the receiving school, a representative of the district board of education and, if possible, the parent shall visit the school.

3. When a district board of education places a student with a disability in an approved residential private school in order to provide the student a free, appropriate public education, such placement shall be at no cost to the parent. The district board of education shall be responsible for special education costs, room and board.

4. Placement of a student with a disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education and related services costs. When the student has been placed by a public agency empowered to make such placement, the district board of education shall convene a meeting according to N.J.A.C. 6A:14-2.3(k) to revise the IEP as necessary to provide the student special education and related services.

(c) If the approval of a private school for students with disabilities is removed, a district board of education having a student with a disability placed therein shall immediately begin seeking an alternative, appropriate placement for that student.

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 each school year.

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, updated the last N.J.A.C. reference; rewrote (b)1; in (b)4, updated the N.J.A.C. reference, inserted “and related services” and added “to provide the student special education and related services” at the end; deleted former (c) and recodified former (d) as new (c), substituting “students with disabilities” for “the disabled”.

## Case Notes

Jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child, was in Department of Education. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Disputes regarding proper residential placement of developmentally disabled citizens should be processed as "tested cases" under Administrative Procedure Act (APA). Superior Court, Law Division did not have jurisdiction. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

An Administrative Law Judge (ALJ) concluded that a school district had provided a learning-disabled high school student with a free and appropriate public education within the meaning of the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400. That being so, the student's parents were not entitled to reimbursement per N.J.A.C. 6A:14-7.5(b)3 of the costs that they had incurred in unilaterally removing him from the public school and enrolling him in an out-of-district residential program. Nor did the parents give the school district at least 10 days' notice that they were rejecting the Independent Educational Plan and enrolling the student in an out-of-district placement as required by N.J.A.C. 6A:14-2.10(c). *G.R. and S.R. ex rel. D.R. v. Mt. Olive Twp. Bd. of Educ.*, OAL DKT. NO. EDS 8115-12, AGENCY DKT. NO. 2012-18395, 2014 N.J. AGEN LEXIS 227, Final Decision (June 2, 2014).

School district did not fulfill its responsibility to provide a free appropriate public education to a student under N.J.A.C. 6A:14-7.5(b)4. There were factual issues as to the time the student completed the educational component that the district was responsible for, but no documentary evidence was presented on that issue. *S.K. and S.E. ex rel. M.E. v. Millburn Twp. Bd. of Educ.*, OAL DKT. No. EDS 07745-13, 2014 N.J. AGEN LEXIS 149, Final Decision (April 3, 2014).

Initial Decision (2006 N.J. AGEN LEXIS 186) adopted, which, on remand, denied a public employee's application to purchase prior pension. The employee's prior service with a child development center and a cerebral palsy center was ineligible for such credit because such centers were private entities under this section, and as such, the em-

ployee was not an employee of the public school system. Although she was the employee of two private entities that provided services to various school districts, she resigned from her positions with the centers and only informed the supervisor of each of these private entities, never submitting any resignation to the school districts she served on behalf of these agencies; thus, the employee's employment with the centers did not qualify her for a liberal construction of the pension statutes. In re Goldberg, OAL DKT No. TYPTP 1795-2005, 2006 N.J. AGEN LEXIS 692, Final Decision (April 7, 2006).

State's unauthorized placement of child in private school may result in waiver of entitlement to reimbursement by school board. *Board of Education of Borough of Prospect Park v. New Jersey Department of Education, et al.*, 97 N.J.A.R.2d (EDU) 134.

Parents failed to show that out-of-state placement would be less restrictive than current successful placement within district. *P.B. v. Caldwell-West Caldwell Board of Education*, 97 N.J.A.R.2d (EDS) 17.

Record supported contested classification and academic plan. *South Brunswick Board of Education v. J.R.*, 97 N.J.A.R.2d (EDS) 1.

Request for summer camp placement for disabled student was denied where regression was unlikely and camp was primarily recreational. *C.W. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDS) 279.

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.

Proof; necessity that school district provide compensatory educational services for handicapped student beyond high-school level. *J.G. v. Freehold Regional School District*, 94 N.J.A.R.2d (EDS) 178.

## 6A:14-7.6 Provision of programs

(a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6A:14-

2.8, the applicable provisions of N.J.A.C. 6A:14-4, and to the student's IEP.

(b) When the parent or district board of education requests mediation or due process, the student with a disability shall remain in the current placement, according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u), as applicable.

(c) All personnel serving students with disabilities shall be highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law.

(d) Each school shall have on staff a full-time non-teaching principal who shall be responsible for administration and supervision of the school.

1. In lieu of assigning a full-time non-teaching principal to a school, a plan to ensure adequate supervision of students and staff may be submitted to the county superintendent of schools for approval;

2. If the county superintendent of schools approves the plan, the school shall operate in accordance with the plan in lieu of having a full-time non-teaching principal on staff.

(e) Students with disabilities who are placed in receiving schools may be suspended for up to 10 consecutive or cumulative school days in a school year by the receiving school. Such suspensions are subject to the same procedures as nondisabled students as set forth at N.J.A.C. 6A:14-2.8. However, at the time of suspension, the principal of the receiving school shall forward written notification and a description of the reasons for such action to the district board of education's case manager.

(f) A receiving school shall not unilaterally implement disciplinary action involving removal to an interim alternative educational setting, suspension of more than 10 consecutive or cumulative school days in a school year or termination of placement. Such disciplinary action shall be implemented in conjunction with the sending district board of education according to N.J.A.C. 6A:14-2.8.

(g) Educational programs shall be open to observation at all times to the representatives of the sending district board of education and of the Department of Education.

(h) With prior written approval of the Department of Education, a school described in N.J.A.C. 6A:14-7.1(a) may operate an extended academic year program.

(i) A school day shall consist of not less than four hours of actual school work, which does not include nonacademic time such as lunch and recess periods, except that a special class program for preschoolers with disabilities operated in accordance with N.J.A.C. 6A:14-4.1 may be considered a full day program.

(j) A provider of programs under this subchapter shall notify the Department of Education a minimum of 90 calendar days prior to ceasing operation or a change in ownership.

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.

#### Case Notes

When a student with a disability was placed by the school district in a private receiving school, and the student alleged that the private school was interfering with the student's right to a FAPE, the private receiving school had to answer the charge in the same tribunal as the district sending school. A contrary conclusion would have thwarted the mandate expressed in the IDEA, that children placed in private schools by their local school districts receive all of the same rights and protections as they would receive if educated in the local district. J.R. ex rel. T.R. v. Somerville Borough Bd. of Educ., OAL DKT. EDS 8134-06, 2006 N.J. AGEN LEXIS 893, Final Decision (October 18, 2006).

#### 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 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.

(c) Prior to a parent withdrawing a student with a disability from a receiving school, the parent shall request that the district board of education convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k).

(d) A student with a disability placed in a receiving school by the district board of education shall receive a diploma from the district board of education if the requirements of N.J.A.C. 6A:14-4.11 are met.

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), amended N.J.A.C. 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 introductory paragraph of (a) and (d); at (a)1 and (b), substituted "within 10 days of the date of the IEP meeting" for "without delay"; in (b) and (c), substituted "6A:14-2.3(k)" for "6A:14-2.3(i)2".

#### Case Notes

Parents of a four-year-old autistic child were granted emergency "stay-put" relief, pending the outcome of a due process hearing, where receiving out-of-district school sought to remove their child from its program. The sending school failed to give proper notice or convene an IEP meeting, either before or after expiration of the 10-day time period in N.J.A.C. 6A:14-7.7; and, even if the state regulation did not apply because the receiving school notified the sending school in July 2006, rather than "prior to the end of the student's academic year," the federal IDEA stay-put provision in 20 U.S.C.A. 1415 overrides state law. 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).

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).

When analyzing a request for a "stay-put" order, the criteria set forth in N.J.A.C. 1:6A-12.1(e) for granting emergent relief are inapplicable; the federal IDEA stay-put provision in 20 U.S.C.A. 1415 is unequivocal and mandates that "the child shall remain in the then-current educational placement." 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).

#### 6A:14-7.8 Fiscal management

(a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual student placement approval.

(b) The district board of education shall establish a written contract for each student with a disability it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the student with a disability. For students placed in an approved private school for students with disabilities, the

district board of education shall use the mandated tuition contract according to N.J.A.C. 6A:23A-16 through 22.

(c) Daily transportation costs shall be paid by the district board of education.

(d) Transportation for students in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6A:27-5.2.

(e) All approved private schools for students with disabilities shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6A:23A-16 through 22.

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

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

Amended NJAC references throughout.

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 first sentence of (b), substituted "student with a disability" for "disabled student"; in the last sentence of (b) and in (e), substituted "students with disabilities" for "the disabled".

Notice of readoption with technical change.

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

#### 6A:14-7.9 Records

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6A:32 pertaining to student records. In addition:

1. All student records maintained by a receiving school under this subchapter shall be returned to the responsible district board of education when a student's program is terminated.

2. Requests for access to student records by authorized organizations, agencies or persons as stated in N.J.A.C. 6A:32 shall be directed to the chief school administrator or his or her designee of the district board of education having responsibility for the student with a disability.

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained in accordance with N.J.A.C. 6A:23A-16 through 22 and made available to the district board of education upon request. Habitual tardiness or prolonged absences of five or more consecutive days shall be reported in writing to the chief school administrator of the district board of education or his or her designee.

(b) Student progress reports shall be submitted at least three times a year or as stipulated in the contract between the district board of education and the receiving school.

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)3, added "or his or her designee" at the end.

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)3, 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 the introductory paragraph of (a) and in (a)2, substituted "6A:32" for "6:3-6"; in (a)3, inserted



"of five or more consecutive days"; in (b), added "between the district board of education and the receiving school" at the end.  
 Notice of readoption with technical change.  
 See: 45 N.J.R. 1909(c).

#### 6A:14-7.10 Monitoring and corrective action

(a) The Department of Education shall monitor approved private schools for students with disabilities according to N.J.A.C. 6A:14-9.1. On site monitoring shall be conducted in accordance with the schedule established by the Department.

(b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited, to the following:

1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated with State or Federal statute or rules and/or implementation of the corrective action plan.

- i. An approved private school which is issued a conditional approval status may not accept new students;

2. The Department of Education may revoke approval effective at the end of a school year, when chronic or systemic noncompliance is demonstrated; and

3. The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(c) An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

Amended by R.2000 d.137, effective April 3, 2000.  
 See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (c), 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).

In (a), substituted "six" for "four" preceding "years".  
 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 "students with disabilities" for "the disabled" and "in accordance with the schedule established by the Department" for "at least every six years".

#### Case Notes

N.J.A.C. 6A:14-9.1 et seq. and N.J.A.C. 6A:14-7.10(b)3 represent two complementary but distinct processes, and the latter clearly (and appropriately) authorizes the Department to act without observing the procedural requirements of the former in situations where student health and safety are at risk. The Department proved by a preponderance of the evidence that revocation of petitioner's approval to operate a private school for students with disabilities was warranted where school had enrolled students beyond its approved capacity and was transporting "overflow" students to a separate, unapproved site. All Can Excel Academy v. N.J. Dept. of Educ., OAL Dkt. No. EDU 1240-07, 2008 N.J. AGEN LEXIS 234, Commissioner's Decision (March 13, 2008).

### SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS, CHILDREN AND FAMILIES, AND HUMAN SERVICES, AND THE JUVENILE JUSTICE COMMISSION

#### 6A:14-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6A:17-3 and the requirements of this chapter.

(b) Each State agency operating approved programs shall develop a special education plan according to N.J.A.C. 6A:14-1.2 which additionally shall include:

1. A list of all State and Federal funding sources; and
2. A separate educational budget statement for each State facility.

(c) All students with disabilities shall receive an educational program and related services based on an IEP. A student who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the IEP incorporated into the plan.

(d) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for nondisabled students. Educational programs shall operate at least 220 days each year.

(e) Each district board of education shall provide mandated student records according to N.J.A.C. 6A:32 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent shall receive notification of the release of these records to the facility. Permitted records according to N.J.A.C. 6A:32 shall be released only with consent.

(f) For a student in residence in a State facility, the responsible district board of education shall maintain the educational records sent by the State facility according to N.J.A.C. 6A:32.

(g) For a student in residence in a State facility, the responsible district board of education shall facilitate the entry of the student into the local district program, as appropriate.

(h) When a student is placed in a State facility by a public agency other than the district board of education, the State shall provide a program according to the following:

1. If the student is a student with a disability, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current individualized education program.

2. If the student is not currently classified as a student with a disability, or if the State facility does not have

current school records, within 30 calendar days the State facility shall review the student's educational status and determine if referral to the child study team is required.

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

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

In (e), deleted a reference to adult student.

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), 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 (e) and (f), substituted "6A:32" for "6:3-6"; in (h)1 and (h)2, substituted "a student with a disability" for "disabled".

#### Case Notes

N.J.A.C. 6:28-8.1(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

Approved in-state school and not out-of-state school was appropriate placement for 20-year-old autistic student. J.R. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 12.

### 6A:14-8.2 Procedural safeguards

(a) Mediation shall be available for a student in a State facility according to N.J.A.C. 6A:14-2.6.

(b) A request for a due process hearing for a student in a State facility shall be made to the Department of Education according to N.J.A.C. 6A:14-2.7.

(c) Discipline of students with a disability shall be according to N.J.A.C. 6A:14-2.8.

(d) Surrogate parents shall be appointed according to N.J.A.C. 6A:14-2.2.

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

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

In (c), substituted "students with a disability" for "disabled students".

### 6A:14-8.3 Provision of programs

(a) A residential State facility may recommend placement of a student with a disability in a local school district. Documentation of attempts to place the student in the least restrictive environment according to N.J.A.C. 6A:14-4 shall be stated in the student's IEP. Tuition shall be paid by the State facility to the local board of education where the student is placed.

(b) All personnel providing special education programs, related services, or multi-disciplinary team services shall hold the appropriate educational certificate and, if required, a license for the position in which they function.

(c) Day school programs operated by the Department of Children and Families shall be provided in the following manner:

1. The Department of Children and Families shall provide educational programs and related services for students with disabilities in State-operated or contracted facilities;

2. The district board of education shall be responsible for providing the services according to N.J.A.C. 6A:14-3.3 through 3.8. The day school program is responsible for implementing the IEP developed by the district board of education; and

3. The district board of education shall be responsible to monitor the student's placement at least annually to ensure the implementation of the IEP.

(d) An educational program for students with disabilities in a State residential facility shall be commensurate with those in a day school program.

(e) For students placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6A:14-2.3(k).

(f) When a student in a State facility is in need of home instruction according to N.J.A.C. 6A:16-10.1, the State facility shall implement the home instruction program.

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 "4" for "4.2"; rewrote (b); in (e), substituted "(k)" for "(i)"; in (f), substituted "6A:16-10.1" for "6A:14-4.9".

Notice of readoption with technical change.

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

#### Case Notes

N.J.A.C. 6:28-8.3(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

## SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

### 6A:14-9.1 Monitoring and corrective action

(a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey statutes, the New Jersey Administrative Code, the approved special education plan and Federal requirements under the Individuals with Disabilities Education Act (IDEA).

1. The monitoring process shall include, but is not limited to, review of:

- i. Provision of a free, appropriate public education in the least restrictive environment;
- ii. Provision of transition services; and
- iii. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent such representation is the result of inappropriate identification.

(b) The monitoring procedures may include, but are not limited to:

1. A self-assessment conducted by the program being monitored;
2. Review of data, reports and student records;
3. On-site visits;
4. Comparison of a sample of individualized education programs with the programs and services provided;
5. Development of an improvement plan by the program being monitored to address areas of noncompliance identified during the self-assessment; and
6. Audit of Federal and State funds.

(c) After the monitoring process is completed, a report shall be written and sent to the public or private agency.

(d) If the public or private agency receives a final report that indicates noncompliance in addition to any areas of need identified through self-assessment, revisions to the improvement plan shall be developed by the agency and submitted to the Department of Education for approval.

(e) The improvement plan shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each noncompliance item cited, including resources needed; and
2. The dates by which noncompliance will be corrected.

(f) The Department of Education shall review the improvement plan and notify the agency if it is acceptable.

(g) When an improvement plan is not submitted, found unacceptable or not implemented, the Department of Education shall notify the agency of the actions that it intends to take.

(h) An appeal of the denial of approval of an improvement plan, imposition of sanctions or determination of noncompliance may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

(i) The Department of Education shall maintain monitoring records for a period of at least five years.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (h), 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).

In (a), added a reference to Federal requirements under IDEA.  
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

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education

Act, cannot be appealed to the Commissioner of Education. 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).

N.J.A.C. 6A:14-9.1 et seq. and N.J.A.C. 6A:14-7.10(b)3 represent two complementary but distinct processes, and the latter clearly (and appropriately) authorizes the Department to act without observing the procedural requirements of the former in situations where student health and safety are at risk. The Department proved by a preponderance of the evidence that revocation of petitioner's approval to operate a private school for students with disabilities was warranted where school had enrolled students beyond its approved capacity and was transporting "overflow" students to a separate, unapproved site. All Can Excel Academy v. N.J. Dept. of Educ., OAL Dkt. No. EDU 1240-07, 2008 N.J. AGEN LEXIS 234, Commissioner's Decision (March 13, 2008).

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ., OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

#### 6A:14-9.2 Complaint investigation

(a) The State Director of the Office of Special Education Programs or designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint regarding the provision of special education and related services covered under this chapter.

(b) An organization or individual may request a complaint investigation by simultaneously submitting a written signed request to the State Director of the Office of Special Education Programs and to the educational agency against which the complaint is directed. The complaint shall include:

1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
2. The facts on which the statement is based; and
3. The time period when the alleged violation occurred.
  - i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received.

(c) The Office of Special Education Programs shall, if deemed necessary, complete an investigation within 60 calendar days after receipt of the written signed complaint and issue a report setting forth a final decision with respect to the complaint, unless the time period is extended according to (c)6 below.

1. If a party believes that a final decision includes an error that is material to the determination in the decision, the party may inform the Office of Special Education Programs and the other party in writing, within 15 days of the date of the report. The letter shall identify the asserted error and include any documentation to support the claim. The Office of Special Education Programs will determine the appropriate steps to consider the claim of error after receipt of the letter.

2. The investigation may include, but not be limited to:

- i. Review of policies and procedures;
- ii. Review of student record(s);
- iii. Observation of programs;
- iv. Interview(s);
- v. An on-site investigation if determined necessary; and
- vi. If the parent consents, an opportunity for the education agency to engage the parent in mediation or an alternative means of dispute resolution.

3. The complainant shall be given the opportunity to provide additional information, either orally or in writing about the allegations in the complaint.

4. The education agency against which the complaint is directed shall be provided an opportunity to respond to the complaint and, at the discretion of the Director of the Office of Special Education Programs or a designee, may be afforded an opportunity to resolve the issues in the complaint prior to issuance of an investigation report.

5. The State Director of the Office of Special Education Programs may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint or if the parent and education agency agree to mediate the dispute or engage in another means of dispute resolution.

(d) If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Office of Special Education Programs shall set aside the entire complaint until the conclusion of the hearing.

1. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and the Office of Special Education Programs shall inform the complainant to that effect.

(e) A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to all parties within 60 calendar days after receipt of the written signed complaint unless the 60-day time period is extended in accordance with (c)6 above.

(f) If the education agency is found to be in noncompliance, a corrective action plan in accordance with the directive in the report shall be developed and submitted to the Office of Special Education Programs.

(g) The corrective action plan shall include, but not be limited to:

- 1. Objectives, strategies and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and
- 2. The dates by which the noncompliance will be corrected.

(h) The State Director of the Office of Special Education Programs shall review the corrective action plan and notify the education agency if it is acceptable.

(i) The Office of Special Education Programs shall review and verify the implementation of the corrective action plan.

(j) When a corrective action plan is not submitted, is unacceptable or is not implemented, the Office of Special Education Programs shall notify the agency of the actions it intends to take.

(k) Nothing in this section shall be construed as limiting the right of parents or adult students to seek a due process hearing with regard to issues raised in a request for complaint investigation. If a due process hearing is sought while a complaint investigation is pending, the complaint investigation with respect to all issues in the request for a due process hearing shall be halted pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed in accordance with (d) above.

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); in (c), added a new 2 and recodified former 2 as 3; added a new (d) and recodified former (d) as (e); and recodified former (e) through (i) as (f) through (j).

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.

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

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

Rewrote (b) through (f).

#### Case Notes

Regulation authorizing the Office of Special Education Programs (OSEP) to issue a final decision following its complaint investigation, N.J.A.C. 6A:14-9.2(c), is valid, and thus the School Board could not appeal OSEP's investigation decision to the Commissioner of Education. 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).

State special education regulations addressing complaint time limitations and procedures applicable to complaint and due process hearing request concerning the same issue mirrored language of equivalent federal regulations and satisfied federal requirements. Baer v. Klagholz, 771 A.2d 603 (2001).



State special education regulations concerning implementation of final decisions of state educational agency (SEA) with respect to complaint investigations sufficiently complied with federal requirement that corrective action plan be developed and all aspects of final decision be implemented, and were broad enough to encompass all needed implementation tools, despite failure to specify therein particular implementation procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations governing complaint procedures, requiring development of corrective action plan, requiring that objectives and strategies for correcting each non-compliance item be set forth in such plan, and permitting the state Department of Education to take any action deemed necessary should corrective action plan be inadequate, were sufficient to conform to federal regulatory requirements that deficiencies be remediated and appropriate services provided to students with disabilities. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring "a report of findings [and] conclusions" in connection with minimum state complaint procedures required determination as to whether public agency had violated any requirement of the Individuals with Disabilities Education Act (IDEA), as mandated by federal regulations, despite failure to specify particular determinations required to be made in connection with complaint procedures; state regulation's list of activities to be undertaken in investigating complaints was not exclusive, and investigation of and report on complaints of IDEA violations was clearly within its contemplated scope. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Under state special education regulations governing notice of corrective actions intended to be taken by the state Department of Education in response to parent complaints, county office of education was required to notify a noncompliant educational agency should local education agency (LEA) fail to do so. *Baer v. Klagholz*, 771 A.2d 603 (2001).

An Administrative Law Judge concluded that jurisdiction over a claim by the parents of a minor who was entitled to special education services that the county board of education had violated the requirements of state and federal law governing such services was lacking because N.J.A.C. 6A:14-9.2 vested jurisdiction over such issues in the State Director of the Office of Special Education Programs, not the New Jersey Department of Education, Bureau of Controversies and Disputes. *L.K. & A.K. ex rel. L.K. v. N. Burlington Cnty. Reg'l Bd. of Educ.*, OAL Dkt. No. EDU 6071-12, AGENCY Dkt. No. 92-4/12, 2014 N.J. AGEN LEXIS 38, Initial Decision (January 27, 2014).

Allegation that a school district, by hiring a private contractor, violated the law because the district already employed a teaching staff member who was certified to provide speech and language services to a special education student, was based on alleged violations of special education regulations, and not any violations of any teacher's tenure, seniority rights, or any other rights that arise under the school laws; as such, because the claim was really a claim that the district violated the requirements of State regulations governing the provision of special education and related services, the matter should have been taken before Office of Special Education Programs under N.J.A.C. 6A:14-9.2 and was not properly before the Commissioner or Office of Administrative Law. *Long Beach Island Educ. Ass'n v. Bd. of Educ. of Long Beach Island Consol. School Dist.*, OAL Dkt. No. EDU 10501-07, 2009 N.J. AGEN LEXIS 1017, Final Decision (October 13, 2009).

Adopting Initial Decision's conclusion that the Commissioner of Education has no jurisdiction to consider an appeal from the final decision of the Office of Special Education Programs issued in response to a complaint investigation conducted under N.J.A.C. 6A:14-9.2 (adopting and modifying 2006 N.J. AGEN LEXIS 441). *Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ.*, OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), *aff'd*, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), *aff'd*, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. *Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ.*, OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), *aff'd*, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), *aff'd*, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

## SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS

### 6A:14-10.1 Early intervention programs serving children between birth and age three

Early intervention programs shall be administered by the Department of Health as the lead agency in collaboration with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

Notice of readoption with technical change.  
See: 45 N.J.R. 1909(c).

### 6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health for students age three

(a) When an IEP is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that student by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6A:14-1.1(d) shall be met;
2. A contractual agreement shall be provided between the district board of education and the early intervention program;
3. Personnel shall be appropriately certified and, if required, licensed; and
4. Applications for exceptions according to N.J.A.C. 6A:14-4.9 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

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)4, 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 (a)4, substituted "4.9" for "4.10".

Notice of readoption with technical change.

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

## APPENDIX A

### Individuals with Disabilities Education Act Amendments of 2004

20 U.S.C. §§1415, 1412, 1414

20 U.S.C. §1415

#### (k) Placement in alternative educational setting

##### (1) Authority of school personnel

###### (A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

###### (B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

###### (C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

###### (D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

#### (E) Manifestation determination

##### (i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

##### (ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

#### (F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

**(G) Special circumstances**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is

determined to be a manifestation of the child's disability, in cases where a child—

- (i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;
- (ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or
- (iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

#### (H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

#### (2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

#### (3) Appeal

##### (A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

##### (B) Authority of hearing officer

###### (i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

###### (ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

- (I) return a child with a disability to the placement from which the child was removed; or
- (II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that main-

taining the current placement of such child is substantially likely to result in injury to the child or to others.

#### (4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

#### (5) Protections for children not yet eligible for special education and related services

##### (A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

##### (B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

##### (C) Exception



A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 812(c) of Title 21.

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of Title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18.

20 U.S.C. §1412

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

## 20 U.S.C. §1414

### (a) Evaluations, parental consent, and reevaluations

#### (1) Initial evaluations

##### (A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this part.

##### (B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

##### (C) Procedures

##### (i) In general

Such initial evaluation shall consist of procedures—

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

##### (ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

##### (D) Parental consent

#### (i) In general

##### (I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

##### (II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

#### (ii) Absence of consent

##### (I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

##### (II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

##### (III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which

the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

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.

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c) of this section—

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur—

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that—

(A) assessments and other evaluation materials used to assess a child under this section—

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(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 not feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures—

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities

(A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including—

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D)



of this section, prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency—

(A) shall notify the child's parents of—

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

## APPENDIX B

20 U.S.C. §1401(26)

20 U.S.C. §1401(26)

Except as otherwise provided, in this chapter:

(26) Related services

(A) In general

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services 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, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

## APPENDIX C

20 U.S.C. §1401(29)

20 U.S.C. §1401(29)

(29) SPECIAL EDUCATION— The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

## APPENDIX D

20 U.S.C. §1401(34)

20 U.S.C. §1401(34)

(34) Transition services. The term "transition services" means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

#### APPENDIX E

20 U.S.C. §1412(a)(3)

20 U.S.C. §1412(a)(3)

(3) Child find.

(A) In general. All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction. Nothing in this title [20 U.S.C.S. §§1400 et seq.] requires that children be classified by their disability so long as each child who has a disability listed in section 602 [20 U.S.C.S. §1401] and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part [20 U.S.C.S. §§1411 et seq.].

#### APPENDIX F

20 U.S.C. §1401(1)

20 U.S.C. §1401(1)

(1) Assistive technology device.

(A) In general. The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.

#### APPENDIX G

20 U.S.C. §1401(2)

20 U.S.C. §1401(2)

(2) Assistive technology service. The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.