

"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 parent, the legal guardian, foster parent, surrogate parent, person acting in the place of a parent such as the person with whom the student legally resides and/or a person legally responsible for the student's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the natural parent retains all rights under this chapter.

"Recreation" for students with disabilities means instruction to enable the student to participate in appropriate leisure activities, including involvement in recreation programs offered by the district board of education and the facilitation of a student's involvement in appropriate community recreation programs.

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

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education as specified in the student's IEP, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school nursing services, social work services in schools and parent counseling and training that is related to the education of the student.

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

"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 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 pre-school 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" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

#### Case Notes

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

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

## 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 or adult student, 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. 6:3-6), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(c) If the mediation according to N.J.A.C. 6A:14-2.6 or due process hearing according to N.J.A.C. 6A:14-2.7 involves initial admission to the public school, the child shall be placed in an interim public school program agreed to by the parent and the district board of education pending the outcome of the mediation or due process hearing.

#### Case Notes

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school

programs; determination of appropriate placement. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

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

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

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

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

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

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

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

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

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

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

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

## 6A:14-2.2 Surrogate parents

(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 either:

1. The parent cannot be identified according to N.J.A.C. 6A:14-1.3;
2. The parent cannot be located after reasonable efforts; or
3. The student is a ward of the State of New Jersey.

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

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

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

(d) The person(s) serving as a surrogate parent may not be an employee of the district board of education. A surrogate parent may be paid solely to act in that capacity.

## Case Notes

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

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

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

(a) Consent shall be obtained:

1. Prior to initial evaluation;
2. Prior to implementation of the initial IEP resulting from (a)1 above;
3. Prior to reevaluation, except that such consent is not required, if the district board of education can demonstrate that it had taken reasonable measures to obtain such consent and the parent or adult student failed to respond; and
4. Prior to the release of student records according to N.J.A.C. 6:3-6.

(b) If a parent or adult student refuses to provide consent and the district and the parent have not agreed to other action, the district shall request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

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

(d) 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.

(e) Written notice shall be in language understandable to the general public, and shall be provided in the native language 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 including;
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 and/or adult students shall be provided:
  - i. Upon referral for an initial evaluation;
  - ii. Upon each notification of an IEP meeting;
  - iii. Upon reevaluation; and
  - iv. When a request for a due process hearing is submitted to the Department of Education.

(f) Written notice according to (e) above shall be provided to the parent and/or adult student 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 of board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent and/or adult student may consider the proposal. The proposed action may be implemented sooner, if the parent and/or adult student agrees in writing;
3. The district board of education shall implement the proposed action after the opportunity for consideration in (f)2 above has expired unless:
  - i. The parent or adult student disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or

ii. The parent or adult student 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 (f)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)9 or 2.7(j).

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 determines 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 (e) 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 returned to the last agreed upon placement, unless the parent and district agree otherwise, the district requests emergency relief or if the student has been placed in an interim alternative educational setting according to 20 U.S.C. § 1415(k)(1)(A)(ii) or § 1415(k)(2), the student shall remain in the interim alternative educational setting according to 20 U.S.C. § 1415(k)(7).

5. Upon receipt of any written parental request to initiate or change the identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (e) above shall be provided to the parent and/or adult student within 20 calendar days.

(g) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (e) above, the parent and/or adult student 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).

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

1. The identification and evaluation of the student by providing relevant information to the evaluation team;
2. The determination of the student's eligibility for special education and related services;
3. The development of an IEP according to N.J.A.C. 6A:14-3.7;
4. The placement of the student with a disability; and
5. The annual review of the IEP.

(i) Meetings shall be conducted to determine eligibility and to develop, review and revise the student's IEP. Meetings to determine eligibility and develop an IEP may be combined as long as the requirements for notice of a meeting according to (e)7ii above and (i)3 through 5 below are met.

1. An initial 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 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 disabled, or the school principal or designee if they choose to participate.

2. Meetings to develop or review the IEP for students classified according to N.J.A.C. 6A:14-3.5 or 3.6 shall include the following participants:

- i. The parent;
- ii. At least one regular education teacher, if the student is or may be participating in the regular education classroom;

(1) The regular education teacher shall be knowledgeable about the student's educational performance or the district's programs;

iii. At least one special education teacher, or where appropriate, at least one special education provider;

(1) The special education teacher or special education provider shall be knowledgeable about the student's educational performance or the district's programs;

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 district board of education 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) May be the child study team member or other appropriate 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;

viii. The student where appropriate; and

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

3. Parent and adult students 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.

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

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. Documentation shall be maintained of all attempts to secure parental participation.

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.

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting.

(j) An adult student shall be given notice and participate in meetings according to (a) through (i) above.

(k) When requesting consent to conduct an initial evaluation or for initial implementation of a special education program and related services for an adult student, consent shall be obtained from the adult student and notice shall be provided to the adult student and his or her parent.

(l) Upon attainment of the 18th birthday, adult students shall be given a copy of this chapter and the procedural safeguards statement published by the Department of Education.

## 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.*

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).*

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.

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

(a) In conducting the 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 student's native language or other mode of communication unless it is clearly not feasible to do so;

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; and

6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of at least two members of the child study team and where appropriate, other specialists. At least one evaluator shall be knowledgeable in the area of the suspected disability.

(c) A parent may request an independent evaluation if there is disagreement with the evaluation provided by a district board of education.

1. Such independent evaluation(s) shall be provided at no cost to the parent unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the 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 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. Upon receipt of a parental request, each district board of education shall provide information about where an independent evaluation may be obtained.

5. Any independent evaluation submitted to the district shall be considered in making decisions regarding special education and related services.

#### 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).

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

(b) If either party is unwilling to participate in mediation, a request for a due process hearing under N.J.A.C. 6A:14-2.7 may be made directly to the Department of Education through the Office of Special Education Programs.

1. 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.

(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 issue(s) in dispute and the relief sought;

3. A mediation conference consistent with New Jersey law and rules shall be conducted within 20 calendar days after receipt of a written request. At the mediation conference, issues shall be identified 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;

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

v. Adjourn the mediation 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 and signed by each party. 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 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. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation; and

9. 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(g), or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented. (See Chapter Appendix.)

#### Case Notes

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

Attorney fees incurred in mediation; compensability. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Attorney fees recoverable under IDEA after resolution of complaint through mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Parent could recover attorney fees recoverable following resolution of her special education complaint even though parent was allegedly to blame for forcing mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J. 1994, 849 F.Supp. 312.

Parent was "prevailing party" in mediation and entitled to award of attorney fees. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Use of expert was not "necessary" and court would award only \$100 of witness' \$500 fee. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

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

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

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

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

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

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

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

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement or the provision of a free, appropriate public education. For students above the age of 21, any disputes regarding the provision of programs and services to these students shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(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, implement an initial IEP 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, name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought.

(d) When the Office of Special Education Programs receives a request for a due process hearing, the following shall occur:

1. The Office of Special Education Programs shall acknowledge receipt of the request and provide information to the parent regarding free and low cost legal services and the availability of mediation;

2. Upon receiving the acknowledgment from the Office of Special Education Programs, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A; and

3. Within seven calendar days of the written request, a representative from the Office of Special Education Programs shall conduct a transmittal conference.

- i. The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses;

- ii. If the parties agree to withdraw from the due process hearing at the transmittal conference to pursue mediation, a mediation conference shall be scheduled within 20 calendar days, depending on the availability of the mediator;

- iii. The district board of education shall ensure that the chief school administrator or designee with the authority of the chief school administrator participates in the transmittal conference;

- iv. The transmittal conference shall be scheduled at a time and place reasonably convenient to the parties. At the discretion of the representative from the Office of Special Education Programs, the conference may be conducted by telephone;

- v. The transmittal conference may result in either withdrawal or transmittal to the Office of Administrative Law according to N.J.A.C. 1:6A; and

- vi. If the conference results in transmittal to the Office of Administrative Law:

- (1) The representative from the Office of Special Education Programs will prepare a written document of the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be forwarded immediately to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties; and

- (2) The representative from the Office of Special Education Programs shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by an administrative law judge at the request of either party. If the parent or adult student does not participate in the conference and is not available to schedule a hearing date, or the parties cannot agree to hearing dates, a date shall be assigned by the Office of Administrative Law within the required timelines.

- (e) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the receipt of the request for a hearing unless a specific adjournment is granted in response to a request by either party to the dispute.

- (f) 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-18.4.

- (g) Either party may apply in writing for emergency relief as a part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A-12.1. 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 emergency relief shall note that a copy was sent to the other party.

- (h) Prior to transmittal of a request for a due process hearing to the Office of Administrative Law, application for emergency 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, any application for emergency relief shall be made directly to the Office of Administrative Law.

1. Emergency relief may be requested according to N.J.A.C. 1:6A-12.1.

- i. Emergency relief may be granted if the administrative law judge determines from the proofs that:

- (1) The applicant has a reasonable probability of ultimately prevailing on the merits;

- (2) The student's education program will be terminated or interrupted to the extent that irreparable harm will occur; and



(3) The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

2. Emergency relief may be requested if school personnel maintain that it is dangerous for the student with a disability to be in the current placement;

i. The administrative law judge may order a change in the placement of a student with a disability to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2) as amended and supplemented. (See chapter Appendix.)

3. Emergency relief may be requested by the parent or adult student if he or she disagrees with a manifestation determination related to disciplinary action or with a decision related to placement in an interim alternative educational setting by school officials for behavior involving drugs or weapons according to 20 U.S.C. § 1415(k)(6)(A) as amended and supplemented. (See chapter Appendix.)

(i) If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent or adult student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education. On receipt of this request, implementation of the decision shall be assured.

(j) Pending the outcome of a 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 (h) above or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented. (See chapter Appendix.)

(k) Any party may appeal the decision of an administrative law judge according to N.J.A.C. 1:6A-18.3.

#### Case Notes

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

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

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

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

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

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

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

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

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

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.*, 97 N.J.A.R.2d (EDS) 357.

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.

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 without the provision of educational services 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.

(b) 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.)

#### Case Notes

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

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 kindergartener 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. 6:3-6.

(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. 6:3-6 without unnecessary delay and before any meeting regarding the IEP.

(c) Any consent required for students with disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6A:14-1.3 "consent" and 2.3(a) and (b).

#### Case Notes

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

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

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

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

#### 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 or an approved private school for the disabled.

(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 or approved private elementary or secondary school 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.

(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(e) and (f) 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 may not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if:

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.

#### Case Notes

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

#### 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 during the hours students are in attendance.

(c) Specialists in the area of disability may include, but 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 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 deliver appropriate related services to students with disabilities;

4. May provide preventive and support services to non-disabled students; and

5. May provide services to the general education staff regarding techniques, materials and programs for students experiencing difficulties in learning. Services include, but are not limited to, the following:

i. Consultation with school staff and parents; and

ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

#### 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).

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, who reside within the local school district to:

1. Locate students who may be disabled; and
2. Refer students who may be experiencing physical, sensory, emotional, communication, cognitive or social difficulties. The procedures shall include referral for:
  - i. Interventions in the general education program according to N.J.A.C. 6:26;
  - ii. Evaluation to determine eligibility for special education and related services; and/or
  - iii. Other educational action, as appropriate.

(b) The procedures shall provide for referral by instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of students.

(c) Interventions in the general education program to alleviate educational problems shall be provided to a student unless the student's educational problem(s) is such that direct referral to the child study team is required according to (d) below.

1. The staff of the general education program shall maintain written documentation of the implementation and effectiveness of the interventions.

2. When it is determined that interventions in the general education program have not adequately addressed the educational difficulties and it is believed that the student may be disabled, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

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

(d) Interventions in the regular education program are not a prerequisite to an evaluation for services under this chapter when:

1. It can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for services under this chapter is warranted without delay; or
2. The parent or adult student makes 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 who is knowledgeable about the student's educational performance or the district's programs shall be convened within 20 calendar days of receipt of the written request to determine whether an evaluation is warranted and, if warranted, the child study team, the parent and the regular education teacher who is knowledgeable about the student's educational performance or the district's programs shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). 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(a).

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 Department of Health and Senior Services.

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.

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

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 regular education teacher who has knowledge of the student's educational performance or 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 regular education teacher who has knowledge of the student's educational performance or 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 disabled and the disciplinary requirements at N.J.A.C. 6A:14-2.8 shall apply.

(g) Audiometric screening according to N.J.A.C. 6:29-5 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.

#### 6A:14-3.4 Evaluation

(a) The child study team, the parent and the regular education teacher who has knowledge of the student's educational performance or 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 performance and educational needs of the student;

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

3. Determine which child study team members and/or specialists shall conduct the evaluation.

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

(c) 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 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.

(d) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. Such evaluation shall include assessment by at least two members of the child study team and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. 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; and

2. Include functional assessment of academic performance and, where appropriate, behavior. 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 regular classroom;

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.

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

1. Meet with the parent and the regular education teacher who is knowledgeable about the student's educational performance or 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 (d)1 and 2 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 (f) below.

(f) 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; and

3. 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. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

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

(g) The reports and assessments of child study team members or specialists 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 to the IEP team for consideration. The IEP team may accept or reject the entire report(s) or any part of the report(s). Acceptance of the report shall be noted in writing and shall become part of the report(s) of the district. If a report or part of a report is rejected, a written rationale shall be provided to the parent or adult student by the IEP team.

(h) By June 30 of a student's last year in 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).

#### Case Notes

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

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, truantries, 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 distractibility; 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(i)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 of eligibility shall be given to the parent or adult student. 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(i)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 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 13 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. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

3. "Cognitively impaired" corresponds to "mentally retarded" and 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 cognitive impairment" corresponds to "educable" and 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 cognitive impairment" corresponds to "trainable" and 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 cognitive impairment" corresponds to "eligible for day training" and 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 oral language tests, where such tests are appropriate. When the area of suspected disability is language, an evaluation by a certified speech-language specialist is 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(e) 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 means the presence of two or more disabling conditions. 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" is characterized as follows:

i. "Multiple disabilities" means concomitant impairments, the combination of which causes such severe educational problems that programs designed for the separate disabling conditions will not meet the student's educational needs.

ii. "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.

7. "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.

8. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, due to chronic or acute

health problems, such as 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.

9. "Preschool disabled" corresponds to preschool handicapped and means an identified disabling condition and/or a measurable developmental impairment which occurs in children between the ages of three and five years and requires special education and related services.

10. "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.

11. "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.

i. It is characterized by a severe discrepancy 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 computation;
- (6) Mathematical reasoning; and
- (7) Written expression.

ii. The term 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.

iii. The district shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

12. "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; prob-

lem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

13. "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.

#### 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).

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).

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

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

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

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

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

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

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

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

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

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

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

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

Student whose behavior was due directly to heavy marijuana use was not eligible for special education services. *J.M. v. Freehold Township*, 95 N.J.A.R.2d (EDS) 133.

Discrepancy between academic performance and cognitive abilities did not warrant special education classification. *N.C. v. Englewood Board*, 95 N.J.A.R.2d (EDS) 99.

Emotionally disturbed student; special education. *South Orange-Maplewood Board of Education v. A.I.*, 94 N.J.A.R.2d (EDS) 168.

Parents of rebellious student; no determination was made that student was educationally disabled. *B.B. v. Hillsborough Board of Education*, 94 N.J.A.R.2d (EDS) 71.

Placement in full-time residential educational facility was not warranted absent an adequate measurement of mentally disabled student's potential. *J.C. v. Department of Human Services*, 93 N.J.A.R.2d (EDS) 267.

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

Record supported classification of child as neurologically-impaired; placement in one ½ day kindergarten class and one ½ day neurologically-impaired class. *D.M. v. Union City Board of Education*, 92 N.J.A.R.2d (EDS) 143.

Student's asthma did not adversely affect him so as to prevent him from receiving adequate instruction in regular school program; not chronically ill. *Hopewell Valley Board of Education v. S.L.*, 92 N.J.A.R.2d (EDS) 91.

Chronically ill student not special education student entitled to related service of transportation. *R.F. v. Hackensack Board of Education*, 92 N.J.A.R.2d (EDS) 59.

Recovering anorexic was no longer "emotionally disturbed" or "chronically ill". *J.C. v. Elmwood Park Board of Education*, 92 N.J.A.R.2d (EDS) 25.

Ten-year-old student perceptually impaired; implementation of individualized educational program ordered. *In Matter of S.R.*, 92 N.J.A.R.2d (EDS) 4.

Vision and hearing difficulties did not render student classifiable as handicapped. *A.K. v. Clinton Town Board of Education*, 92 N.J.A.R.2d (EDS) 1.

Former regulations silent on reimbursement to parents. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Proper classification under former N.J.A.C. 6:28-1.2(g) of multiply handicapped pupil. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

New York resident's child, domiciled in New Jersey, not entitled to New Jersey free education. *V.R. v. Bd. of Ed., Hamburg Boro., Sussex Cty.*, 2 N.J.A.R. 283 (1980).



Expulsion for disorderly and disruptive behavior. J.P. v. Bd. of Ed., Matawan-Aberdeen Regional School District, 1979 S.L.D. 382, 1979 S.L.D. 389.

Treatment of mainstreaming concept under former N.J.A.C. 6:28-2.1. O'Leary 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(e). 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(i)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 or adult student.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(i)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 meet-

ing. The speech-language specialist shall not serve also 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.

#### **Case Notes**

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.

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(i)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 results of the initial evaluation or most recent evaluation of the student;

3. 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;

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

5. 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;

6. Consider the communication needs of the student;

7. In the case of a student who is deaf or hard of hearing consider the student's language and communica-

tion 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;

8. Consider whether the student requires assistive technology devices and services; and

9. Beginning at age 14, consider the need for technical consultation from the Division of Vocational Rehabilitation Services, Department of Labor.

(d) 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 educational 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. A statement of measurable annual goals that shall be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs. 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;

3. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or a statement of the program modifications or supports that shall be provided for school personnel on behalf of the student:

i. To advance appropriately toward attaining the annual goals;

ii. To be involved and progress in the general education curriculum according to (d)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;

4. 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;

5. 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 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 and a statement of how that student shall be assessed;

6. A statement which specifies the projected date for the beginning of the services and modifications described in (d)3 above, and the anticipated frequency, location, and duration of those services and modifications. For in-class resource programs, the IEP shall specify the frequency and amount of instructional time the in-class resource teacher is present in the class;

7. A statement of the State and local graduation requirements that the student shall be expected to meet. If a student with a disability is exempted from local and State high school graduation requirements, the statement shall include:

i. A rationale for the exemption based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.12; and

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

8. 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;

9. Beginning at age 14, and updated annually, a statement of the transition service needs of the student under the applicable parts of the student's IEP that focuses on the student's courses of study including, when appropriate, technical consultation from the Division of Vocational Rehabilitation Services, Department of Labor;

10. For students with disabilities age 16 and over, or younger if deemed appropriate, a statement of needed transition services including when appropriate, a statement of the interagency responsibilities, or any needed linkages. Transition services are defined in N.J.A.C. 6A:14-1.3.

i. The transition services as defined in N.J.A.C. 6A:14-1.3 shall be based on the individual student's needs, taking into account the student's preferences and interests and 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;

11. If the participants in the IEP meeting determine that transition services shall not be needed in one or more of the specified areas in (d)10i(1) through (5) above, a statement to that effect and the basis upon which the determination was made;

12. The person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate. If the student with educational 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;

13. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;

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

15. 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.

(e) The IEP for the student classified as eligible for speech-language services shall include (d)1 through 6, 14 and 15 above. When appropriate, (d)9, 10 and 13 above shall be included. The statement of the current educational status in (d)1 above shall be a description of the student's status in speech-language performance. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.

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

(g) 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.

(h) 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 educational disabilities shall be completed by June 30 of the student's last year in the preschool program.

2. The annual review of the IEP for an elementary school student with educational 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.

(i) 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.

(j) Signatures of those persons who participated in the development of the IEP shall be maintained and a copy of the IEP shall be provided to the parents.

(k) 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 or a due process hearing decision is issued. 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(e) and (f).

#### 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 (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).

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.

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.

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).

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

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

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

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

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

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

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

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

Behavioral difficulties of disabled student precluded mainstreaming in regular school setting. *J.T. v. Collingswood Board*, 95 N.J.A.R.2d (EDS) 129.

Student with attention deficit disorder was more appropriately placed in private school. *R.S., A Minor v. West Orange Board*, 95 N.J.A.R.2d (EDS) 59.

Disabilities of emotionally disturbed and gifted student were not sufficient to warrant removal from regular setting. *Matawan-Aberdeen v. R.C., A Minor*, 95 N.J.A.R.2d (EDS) 29.

Current placement in public school system, rather than residential placement, was more appropriate for multiply handicapped child. *J.M. v. Board of Education*, 95 N.J.A.R.2d (EDS) 10.

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

Teachers could amend individualized educational plan to assist neurologically impaired child during epileptic seizures. *S.G. v. West Orange*, 95 N.J.A.R.2d (EDS) 1.

Deaf student entitled to attend summer school. *R.C. v. Jersey City State-Operated School District*, 94 N.J.A.R.2d (EDS) 166.

Request for an extended school year program was denied for multiply handicapped 14-year old. *J.B. v. Middletown Township Board of Education*, 94 N.J.A.R.2d (EDS) 129.

Denial of emergency transfer of emotionally disturbed child to prior school was proper. *A.W. v. Jefferson Township Board of Education*, 94 N.J.A.R.2d (EDS) 51.

Request to modify special education student's individual education plan was properly denied. *E.J. v. Mansfield Board of Education*, 94 N.J.A.R.2d (EDS) 3.

Classification of 15-year-old child born with Down's syndrome as TMR and to recommend placement in TMR/EMR program at high school was appropriate. *J.B. v. West Orange Board of Education*, 93 N.J.A.R.2d (EDS) 294.

Educational needs of 4-year-old autistic child were met by placement in preschool handicapped program. *K.M. v. Franklin Lakes*, 93 N.J.A.R.2d (EDS) 213.

Personalized educational program and support services were sufficient to allow handicapped student to make significant educational progress. *J.J.K. v. Union County Board*, 93 N.J.A.R.2d (EDS) 161.

Significant regression required extension of school year for multiply handicapped student. *J.C. v. Wharton*, 93 N.J.A.R.2d (EDS) 152.

Student's explosive and violent behavior required placement in structured educational environment. *Ocean City v. J.W.*, 93 N.J.A.R.2d (EDS) 147.

Severely disabled child required school district to comply with Individualized Education Policy in order to deliver a free and appropriate education. *E.M., a Child v. West Orange*, 93 N.J.A.R.2d (EDS) 111.

County region school district failed to establish that self-contained Trainable Mentally Retarded program at in-district school was appropriate educational program for Downs Syndrome student. *A.R. v. Union County Regional High School District*, 93 N.J.A.R.2d (EDS) 48.

Record established that Individualized Education Program for 10-year-old neurologically impaired student should be implemented. *Jersey City School District v. N.G.*, 93 N.J.A.R.2d (EDS) 28.

Program designed and implemented by child study team was adequate; expenditures for outside tutoring not reimbursable. *S.A. v. Jackson Board of Education*, 92 N.J.A.R.2d (EDS) 256.

Appropriate placement for 12-year-old multiply handicapped student was Township public school system; appropriate individualized educational program could be developed. *T.H. v. Wall Township Board of Education*, 92 N.J.A.R.2d (EDS) 227.

Evidence supported in-district placement of neurologically impaired student; parents' preference for out-of-district placement only one factor in decision. *S.A. v. Board of Education of Township of North Brunswick*, 92 N.J.A.R.2d (EDS) 220.

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

Record established that multiply handicapped student's educational needs could not be met by perceptually impaired class offered by board of education. *Alloway Township Board of Education v. M.P.*, 92 N.J.A.R.2d (EDS) 202.

Parents not entitled to reimbursement for placement at nonpublic school; flaws in Individualized Education Program not result in significant harm; no showing that academic program of school met requirements of Program. *N.P. v. Kinnelon Board of Education*, 92 N.J.A.R.2d (EDS) 190.

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

Placement at nonpublic school not authorized; no valid individualized education program. *M.Y. v. Fair Lawn Board of Education*, 92 N.J.A.R.2d (EDS) 163.

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

Student classified as socially maladjusted was entitled to emergent relief authorizing him to participate in high school graduation ceremonies. *B.M. v. Kingsway Regional Board of Education*, 92 N.J.A.R.2d (EDS) 130.

Appropriate placement of 6-year-old, neurologically impaired student was in self-contained neurologically impaired special education class at in-district school. *A.F. v. Roselle Board of Education*, 92 N.J.A.R.2d (EDS) 118.

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

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

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

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

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

Former regulations silent on reimbursement, although sanctioned by Commissioner. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Under former N.J.A.C. 6:28-4.3 and 4.8, a school board is responsible for residential costs when an appropriate nonresidential placement is not available. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Disparate treatment of neurologically versus perceptually impaired pupils (citing former regulations.). *M.D. v. Bd. of Ed., Rahway, Union Cty.*, 1976 S.L.D. 323, 1976 S.L.D. 333, 1977 S.L.D. 1296.

### 6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. When a reevaluation is conducted sooner at the request of a parent or teacher, or because conditions warrant, the reevaluation shall be completed without undue delay.

(b) 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 according to N.J.A.C. 6A:14-3.4(a)2 and administer such tests and procedures 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 performance and educational needs of the student;

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



2. 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(e) and (f) 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;

3. If a reevaluation is warranted, the IEP team shall determine which child study team members and/or specialists shall conduct the reevaluation.

(c) Prior to conducting any reevaluation of a student with a disability, the district board of education shall obtain consent from the parent or adult student according to N.J.A.C. 6A:14-2.3(a)3.

(d) Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(d)1 and 2 or 3.4(e), as appropriate.

(e) A reevaluation shall be conducted when a change in eligibility is being considered.

(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(i)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 or adult student.

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

#### 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. Hadonfield Bd. of Educ.*, D.N.J.1991, 769 F.Supp. 1313.

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.

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 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 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/or licensed therapist in accordance with all applicable State statutes and rules.

5. A district board of education may contract for the provision of 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 as follows:

i. The district board of education shall provide transportation as required in the IEP. Such services shall include special transportation equipment, transporta-

tion aides and special arrangements for other assistance to and from and in and around the school;

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school;

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a student assigned; and

iv. For students with disabilities below the age of five, safety belts or restraint systems are required.

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



(b) A teacher providing supplementary instruction shall be appropriately certified either for the subject or level in which instruction is given or as a teacher of the handicapped according to the requirements of N.J.A.C. 6:11.

(c) Supplementary instruction shall be provided individually or in groups according to the numbers for support resource programs.





(d) Supplementary instruction and replacement resource program shall not be provided by the same teacher during the same instructional period.

#### Case Notes

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: resource programs

(a) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a regular class or in a pull-out resource program according to N.J.A.C. 6:22-5.4 and 5.5. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide support instruction or replacement instruction as defined in (e) and (f) below.

(b) The resource program teacher shall hold certification as a teacher of the handicapped. 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 as a teacher of deaf and/or hard of hearing.

(c) A resource program teacher shall be provided time for consultation with appropriate general education teaching staff.

(d) An in-class resource program may be provided up to the student's entire instructional day. At the elementary level, a pull-out resource program may be provided for up to one half of the instructional day. At the secondary level, a pull-out resource program may be provided for up to the entire instructional day.

(e) In a support resource program, the student shall meet the regular education curriculum requirements for the grade or subject being taught. Modifications to the instructional strategies or testing procedures may be provided and, if provided, shall be provided in accordance with the student's IEP. The primary instructional responsibility for the student in a support resource program shall be the regular class-

room teacher with input from the resource program teacher as specified in the student's IEP. A support resource program provided in the student's regular class shall be at the same time and in the same activities as the rest of the class.

(f) In a replacement resource program, the regular 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. In an in-class replacement resource program, only a single content area shall be taught to the group. A student receiving an in-class replacement program 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.

(g) The age span in an approved separate resource program shall not exceed four years.

(h) Group sizes for 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:

Support	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide Required
In-class <sup>1</sup>	6	—	9	—
Pull-out				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9
Replacement	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide Required
In-class <sup>2</sup>	3	—	3	—
Pull-out				
Single subject	6	7 to 9	9	10 to 12
Multiple subject <sup>3</sup>	4	—	4	—

<sup>1</sup>Group size for in-class support instruction shall not be increased, except according to N.J.A.C. 6A:14-4.10.

<sup>2</sup>Group size for in-class replacement instruction shall not be increased, except according to N.J.A.C. 6A:14-4.10.

<sup>3</sup>Group size for multiple subject pull-out replacement instruction shall not be increased except according to N.J.A.C. 6A:14-4.10.

(i) In-class support and in-class replacement instruction may be provided to students with disabilities by the same teacher during the same instructional period. Group size for this combined in-class resource program shall not exceed five students with disabilities for the preschool, elementary or secondary level.

(j) Secondary resource 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.

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

(a) A special class program shall serve students who have similar educational needs in accordance with their individu-

alized education programs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies an alternative 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 teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of the deaf or hard of hearing;

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

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

(b) The special class programs listed below are organized to provide environments where the nature of the student's impairment is the primary focus. The district board of education shall develop a description of each special class program it provides. Special class programs for students with auditory impairments shall be instructed by a certified teacher of the deaf/hard of hearing.

1. 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.

2. 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.

3. 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 follows:

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

## Visual impairments

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.

(c) 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.

(d) In addition to the requirements for instructional size for special class programs according to (b)3 above, instruction may be provided in the following secondary settings as appropriate:

1. A class organized around a single content area consisting solely of students with disabilities instructed by a regular 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.

2. The number of students with disabilities in a regular education class instructed by a subject area teacher shall be limited to four, if significant program modification is required.

(e) 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:14-4.10. 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.

(f) 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 according to N.J.A.C. 12:51-11 by the New Jersey Department of Labor, Division of Vocational Rehabilitation Services 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.

#### 6A:14-4.8 Program criteria: home instruction

(a) A student classified as disabled 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 programs options have been considered and have been determined inappropriate.

1. Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

2. Approval may be obtained for a maximum of 60 calendar days at which time renewal of the request may be made. Each renewal of the approval may be granted for a maximum of 60 calendar days.

3. N.J.A.C. 6A:14-4.9(a)2, 3 and 4 shall apply.

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 on at least three separate days.

#### Case Notes

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 Home instruction due to temporary illness or injury for students with or without disabilities

(a) To request home instruction due to temporary illness or injury, the parent or adult student shall submit a written determination from a physician documenting the need for confinement at the student's residence for at least a two week period of time. Home instruction for temporary illness or injury shall be provided according to the following:

1. The district board of education shall immediately forward the written request to the school physician, who shall verify the determination of the need for home instruction without delay;

2. Instructional services shall begin as soon as possible but no later than seven calendar days after the school physician's verification;

3. A record of the student's home instruction shall be maintained;

4. The teacher providing instruction shall be appropriately certified as teacher of the handicapped or for the subject or level in which the instruction is given;

5. Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days;

6. Instruction shall be provided at the student's place of confinement. If the student is confined to a hospital, convalescent home or other medical institution, the following criteria shall also apply:

i. Instruction shall be provided by a district board of education, educational services commission, State-operated facility, jointure commission or approved clinic or agency at the student's place of confinement;

ii. Instruction shall be provided through one to one instruction according to (a)5 above or through instruction to small groups as follows:

(1) When instruction is provided in a small group, the number of hours of instruction per week for the group shall be determined by multiplying the number of students in the group by five hours. The hours of instruction shall be provided in no fewer than three visits by a certified teacher on at least three separate days;

iii. Instruction may be provided by direct communication to a classroom program by distance learning devices. If provided, such instruction shall be provided in addition to the one to one according to (a)5 above or small group instruction according to (a)6ii above;

7. Students shall receive a program that meets the requirements of the district board of education for promotion and graduation;

8. For students with disabilities, the district shall provide a program that is consistent with the student's IEP to the extent appropriate. When the provision of home instruction will exceed 30 consecutive school days in a school year, the IEP team shall convene a meeting to review and if appropriate, revise the student's IEP; and

9. When a nondisabled student is confined at home or to a hospital by a physician for more than 60 calendar days, the school physician shall refer the student to the child study team according to N.J.A.C. 6A:14-3.3(e).

#### 6A:14-4.10 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 one 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, or the adult student for whom the exception is requested, and the parents of the students who are affected by the request for an exception shall be informed by the district board of education that such a request is being submitted to the county office of education.

(e) Upon approval of the exception by the county office, the district board of education or the appropriate education agency shall inform the parents of the students with disabilities who are affected by the exception.

(f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter. Any waiver or equivalency previously granted under N.J.A.C. 6:3A for N.J.A.C. 6:28 shall expire on July 6, 1998.

#### 6A:14-4.11 Statewide assessment

(a) Students with disabilities shall participate in Statewide assessments according to the following:

1. Accommodations and/or modifications approved by the Department of Education for the administration of the Statewide assessment shall be provided in accordance with the student's IEP.

2. If 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 Statewide assessment and the student cannot complete any of the questions on the assessment in a subject area with or without accommodations, the student shall participate in a locally determined assessment of student progress.

3. By the year 2000, alternate assessments shall be administered by the Department of Education so that all students are included in the Statewide assessment system.

4. A student with a disability may participate in the Special Review Assessment for the High School Proficiency Test when the IEP team determines that the student requires an alternate format to demonstrate the knowledge and skills measured by the High School Proficiency Test.

#### 6A:14-4.12 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. 6:8-7, 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) 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.

**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, 4.1 and 4.3 through 4.11, 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)9 or 2.7(j) as applicable.

(c) 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. 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 case manager.

(d) A receiving school shall not unilaterally implement disciplinary action involving removal to an interim alternative educational setting, suspension of more than 10 school days in a school year or expulsion of a student with a disability. Such disciplinary action shall be implemented in conjunction with the sending district board of education according to 20 U.S.C. § 1415(k) as amended and supplemented. (See chapter Appendix.)

(e) Educational programs shall be open to observation at any time to the representatives of the sending district board of education and of the Department of Education.

(f) 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.

(g) A provider of programs under this subchapter shall notify the Department of Education 90 calendar days prior to ceasing operation.

**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(i)2. Such meeting shall occur without delay and shall include the participation of appropriate personnel from the receiving school.

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 without delay. 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(i)2. 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 without delay. 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(i)2.

(d) A student with a disability shall receive a diploma if the requirements of N.J.A.C. 6A:14-4.8 are met.

**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 disabled student 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 the disabled, the district board of education shall use the mandated tuition contract according to N.J.A.C. 6:20-4.1(e).

(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. 6:78-1.3.

(e) All approved private schools for the disabled shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6:20.



**6A:14-7.9 Records**

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6:3-6 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. 6:3-6 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. 6:20 and made available to the district board of education upon request. Habitual tardiness or prolonged absences shall be reported in writing to the chief school administrator of the district board of education.

(b) Student progress reports shall be submitted at least three times a year or as stipulated in the contract.

**6A:14-7.10 Monitoring and corrective action**

(a) The Department of Education shall monitor approved private schools for the disabled according to N.J.A.C. 6A:14-9.1. On site monitoring shall be conducted at least every four years.

(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. 6:24.

**SUBCHAPTER 8. PROGRAMS OPERATED BY  
THE DEPARTMENTS OF CORRECTIONS  
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. 6:9 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. 6:3-6 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent or adult student shall receive notification of the release of these records to the facility. Permitted records according to N.J.A.C. 6:3-6 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. 6:3-6.

(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 disabled, 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.