

3. Within 10 calendar days of placement in community rehabilitation facilities, the district board of education shall provide written notification of the placement to the county office.

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

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

In (b)3, divided the learning and/or language disabilities program category into Mild to moderate and Severe.

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

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

Amended (b)3; in (d)2, added second sentence.

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 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).

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

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

In (a), deleted a reference to adult student in the introductory paragraph.

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 the balance of the school year.

(b) The county office shall determine whether the granting of the exception would interfere with the delivery of a free, appropriate public education to the student, or other students in the group and on that basis shall either:

1. Approve the request; or
2. Deny the request.

(c) If the request is denied, the district is still obligated to implement the IEP.

(d) The parent of a student with a disability for whom the exception is requested, and the parents of the students who are affected by the request for an exception shall be informed by the district board of education that such a request is being submitted to the county office of education.

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

(f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter. 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.

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

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

In (a)3, substituted "the balance of the school" for "one" preceding "year"; and in (d), deleted a reference to adult student.

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 after one administration of the High School Proficiency Test when the student fails one or more sections of the test and 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.

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

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

In (a)4, inserted "after one administration of the High School Proficiency Test when the student fails one or more sections of the test and" following "when".

6A:14-4.12 Graduation

(a) Beginning at age 14, the IEP of a student with a disability shall specifically address the graduation requirements. A student with a disability 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) Graduation with a State endorsed diploma is a change of placement that requires written notice according to N.J.A.C. 6A:14-2.3(e) and (f).

1. As part of the written notice, the parent shall be provided with a copy of the procedural safeguards statement published by the Department of Education.

2. As with any proposal to change the educational program or placement of a student with a disability, the parent may resolve a disagreement with the proposal to graduate the student by requesting mediation or a due process hearing prior to graduation.

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

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

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

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

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

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

Amended (a); added a new (b); and recodified former (b) through (d) as (c) through (e).

Case Notes

School district was not required to fund additional full year at out-of-district school for special education student who could meet school district's graduation requirements by attending summer school. *T.R. v. Mt. Olive Board of Education*, 96 N.J.A.R.2d (EDS) 293.

Emergency relief request to allow classified student, who had been barred from graduation ceremonies for assaulting teacher, to participate in those ceremonies was denied. *C.T. v. Clifton Board of Education*, 96 N.J.A.R.2d (EDS) 212.

Emergency relief request to allow student with excessive absences to participate in graduation ceremonies was denied. *M.P. v. Hackettstown Board of Education*, 96 N.J.A.R.2d (EDS) 210.

Special education student not receiving diploma would be allowed to participate in graduation ceremonies where individualized education plan specifically provided for participation. *K.M. v. Northern Valley Regional High School District and Ridgewood Board of Education*, 96 N.J.A.R.2d (EDS) 197.

Special education student was properly denied graduation and senior privileges due to her poor attendance and failure to earn required number of academic credits. *A.S. v. Wayne Board of Education*, 96 N.J.A.R.2d (EDS) 162.

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

6A:14-5.1 General requirements

(a) Each district board of education, independently or through joint agreements, shall employ child study teams, speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

1. Joint agreements for child study team services may be entered into with local education agencies including other local school districts, educational services commissions, jointure commissions and county special services school districts.

(b) When a district board of education provides its educational program through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship, when all the students of one or more grades of a district board of education attend school(s) operated by other district boards of education, the receiving district board of education shall be responsible for determining the eligibility of those students and developing and implementing their IEPs.

2. When individual students are placed in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to students with disabilities.

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services. For the related services listed in (c)1iii below, approved private schools for the disabled may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services.

1. For public school students:

i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5(b);

ii. Child study team diagnostic services to supplement existing local district services;

iii. The related services of occupational therapy, physical therapy and counseling; and

iv. Home instruction.

2. For students attending nonpublic schools, the district in which the facility is located may contract for the following services:

i. Evaluation, determination of eligibility, classification and the development of an individualized education program;

ii. Supplementary instruction, speech-language services and home instruction for students determined eligible for such services; and

iii. English as a second language according to N.J.A.C. 6:31-1.4 and compensatory education accord-

ing to N.J.A.C. 6:8-1 for students eligible for such services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from Department of Education approved clinics and agencies with the prior written approval of the Department of Education through its county office according to the following:

1. A request for approval to purchase services shall include the proposed terms of the contract;
2. The district board of education shall be notified of approval or disapproval;
3. The approval shall be for one year; and
4. Districts are not required to obtain prior written approval of the Department of Education when contracting for an independent child study team evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

(e) Districts boards of education may contract for medical diagnostic services with medical clinics and agencies approved by another New Jersey State agency or appropriate state agencies outside of New Jersey. These agencies do not have to obtain Department of Education approval nor do district boards of education have to receive prior approval of the Department of Education to purchase diagnostic medical services.

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

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

In (c), added second sentence in introductory paragraph.

Case Notes

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

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

6A:14-5.2 Approval procedures for clinics or agencies

(a) For the purposes of approval by the Department of Education, a clinic or agency shall consist of three or more professionals. Initial approval of a clinic or agency shall require, but not be limited to, submission and evaluation of the following:

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county, or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;

3. A list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required and the function he or she shall fulfill;

i. Professional staff employed by a clinic or agency who work full time according to N.J.A.C. 6:3-1.13 for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment;

ii. An employee of a district board of education shall not provide service as an employee of a clinic or agency to a student who is the responsibility of his or her employing district board of education;

4. Assurance that the clinic or agency has conducted the criminal history record check of each professional according to N.J.S.A. 18A:6-7.1;

i. The clinic or agency shall maintain documentation of the information regarding the criminal history record check;

5. Assurance that the facility or facilities in which the services are being provided meet applicable building and other regulatory standards;

6. Assurance of an adequate accounting system according to generally accepted accounting principles;

7. Assurance of a system for the collection, maintenance, confidentiality and access of student records which is according to N.J.A.C. 6:3-6; and

8. Assurance of the maintenance of a log, which includes, but is not limited to:

- i. A list of services provided;
- ii. The date, time and location of the services provided; and
- iii. The names of the professional staff providing the services.

(b) Any clinic or agency denied approval by the Department of Education may appeal the approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6A:3. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

(c) An approved clinic or agency may amend the services provided or the location of its facilities by obtaining prior written approval from the Office of Special Education Programs.

1. To amend the services provided, the agency or clinic shall submit the following:

- i. A revised description of the scope and nature of services to be offered;