

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

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

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

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

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

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

#### Case Notes

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

Appropriateness of individualized education program focuses on program offered and not on program that could have been provided. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Individualized program was not appropriate where goals could be objectively evaluated. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Standard in evaluating individualized education program is whether program allows child "to best achieve success in learning." *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

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

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

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

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

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

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

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

#### Law Review and Journal Commentaries

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

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

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

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

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

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

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

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

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

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

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

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

4. Homeless students are located, identified and evaluated and provided special education and related services in accordance with the IDEA, including the appointment of a

surrogate parent for unaccompanied homeless youths as defined in 42 U.S.C. §§11431 et seq.;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Acquire and disseminate to teachers, administrators, school board members, and related services

personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;

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

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

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

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

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

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

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

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

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

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

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

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

16, transition services is defined as set forth in N.J.A.C. 6A:14-3.7(e)11.

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

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

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

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Amended “General Statewide assessment” and amended “Student age”.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

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

#### Case Notes

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

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

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

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

## SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

### 6A:14-2.1 General requirements

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

(b) Upon request by a parent, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C.

6A:14), student records rules (N.J.A.C. 6A:32), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

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

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

In (b), deleted reference to adult students.

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The parent as defined according to N.J.A.C. 6A:14-1.3 cannot be identified;

2. The parent cannot be located after reasonable efforts;

3. An agency of the State of New Jersey has guardianship of the student, or the student is determined a ward of the State and, if the student is placed with a foster parent, the foster parent declines to serve as the student's parent; or

4. The student is an unaccompanied homeless youth as that term is defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434(a)(6)).

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

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

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

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

1. Have no interest that conflicts with those of the student he or she represents;

2. Possess knowledge and skills that ensure adequate representation of the student;

3. Not be replaced without cause;

4. Be at least 18 years of age; and

5. If the person serving as the surrogate parent is compensated, a criminal history review pursuant to N.J.S.A. 18A:6-7.1 shall be completed for the individual;

(f) The person(s) serving as a surrogate parent may not be an employee of the Department of Education, the district board of education or a public or nonpublic agency that is involved in the education or care of the child. A surrogate parent may be paid solely to act in that capacity.

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

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

2. Determine the whereabouts of the parent.

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

(a) Consent shall be obtained:

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

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

3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had

program modifications or supports for school personnel that will be provided for the student;

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

(1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;

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

v. The case manager;

vi. A representative of the responsible district who:

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

(2) Is knowledgeable about the general education curriculum;

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

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

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

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

viii. The student where appropriate;

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

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

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

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

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

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

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

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

(2) The school district will invite the student;

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

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

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

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

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

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

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

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

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

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

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



team member need not attend the meeting and the parent consents to such excusal in writing.

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

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

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

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

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

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

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

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

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

2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education

program and related services, or for release of records of an adult student shall be obtained from the adult student.

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

Rewrote the section.

#### Case Notes

School board's learning disability teacher-consultant and speech and language teacher, who were academically trained in the field of education, with an emphasis in special education, and who were certificated as teachers, could attend eligibility meeting for students classified for special education and related services, absent evidence that teachers were lacking in knowledge of general education program offered in board's schools. *A.D. and E.P., on Behalf of E.D.P., v. Montclair Board of Education*, 2000 WL 1738434, N.J. Adm., Nov 08, 2000, (NO. EDS 3612-00).

Graduation was “change of placement,” within the meaning of procedural protection of parents’ right to be consulted about their disabled children’s education. *T.H. v. Princeton Regional Board Of Education*, 2003 WL 22178314 (N.J. Adm.), NO. EDS 4087-03.

Attendance of mother’s representative at individualized education program (IEP) meetings involving student, his mother, and school’s child study team was not appropriate, where representative had compromised her effectiveness as an advocate on behalf of student by filing her lawsuit against child study team and its members individually. *J.J.Y., v. Kenilworth Board of Education*, 2000 WL 1459572, N.J. Adm., Aug 11, 2000, (NO. EDS 5599-00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Classification of neurologically impaired student changed to emotionally disturbed. *D.I. v. Teaneck*, 93 N.J.A.R.2d (EDS) 237.

Lack of proper notice to parents of board's placement decision under former N.J.A.C. 6:28-1.9; review meeting under former N.J.A.C. 6:28-1.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

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

(a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly not feasible to do so.

1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent.

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

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

#### Case Notes

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

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

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

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

- i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and
- ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;

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

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

(b) Each district board of education shall ensure:

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

- i. Are selected and administered so as not to be racially or culturally discriminatory; and
- ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and
- iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:

- i. Have been validated for the purpose(s) for which they are administered; and
- ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;

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

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

5. Tests are selected, administered and interpreted so that when a student has sensory, manual or communication impairments, the results accurately reflect the ability which

that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability; and

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

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

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

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

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

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

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

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

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



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

3. Any independent evaluation purchased at public expense shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

Mainstreaming with part-time one-on-one therapy found to be appropriate placement for pupil with severe hearing loss. *Bonadonna v. Cooperman*, 619 F.Supp. 401 (D.N.J.1985).

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

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

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

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

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.

#### Law Review and Journal Commentaries

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

#### 6A:14-2.6 Mediation

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

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

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

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

(c) Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of students with disabilities or with respect to the student that is the subject of the mediation.

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

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

2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the student's name, student's address, student's date of birth, name of the school the student is attending the issue(s) in dispute and the relief sought;

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

4. The role of the mediator is to:

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

ii. Chair the meeting;

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

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

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

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

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

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement which shall be prepared by the mediator at the mediation conference and signed by each party. Mediation agreements shall not address special education or related services for more than one school year. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation, including audio recording, shall be made;

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

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

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

10. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7 as provided in 20 U.S.C. §1415(k) as amended and supplemented (see chapter Appendix A); and

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

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

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

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

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

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

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

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

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

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

**Case Notes**

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

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

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

Parent could recover attorney fees recoverable following resolution of her special education complaint even though parent was allegedly to

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

(u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. §1415(k)4 as amended and supplemented. (See chapter Appendix A.)

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

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

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

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

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

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

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

Rewrote (d)3ii.

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

Rewrote the section.

### Case Notes

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

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

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

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

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

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

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

Authorizing the Office of Special Education Programs to issue the final decision in complaint investigations under N.J.A.C. 6A:14-9.2 is consistent with the overall scheme of resolving individual complaints under the Individuals with Disabilities Education Act; even when a parent or school district receives a due process hearing under N.J.A.C. 6A:14-2.7, the Commissioner of Education does not issue the final administrative decision. *Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ.*, 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Untimely request precluded reimbursement due process hearing for unilateral enrollment of child in private school. *J.F. v. West Windsor-Plainsboro Board of Education*, 96 N.J.A.R.2d (EDS) 119.

Special education student subject to regular school disciplinary process if different standard not applicable. *M.G. v. Brick Township Board of Education*, 96 N.J.A.R.2d (EDS) 82.

School district may evaluate potentially educationally disabled student over parent's objection. *Morris School District v. V.S.*, 96 N.J.A.R.2d (EDS) 37.

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

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

Child study team evaluation requested by one parent was not required for progressing student in joint custody after divorce when opposed by other parent. *R.F. v. Saddle Brook Board*, 95 N.J.A.R.2d (EDS) 187.

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

Absence of evidence that student would regress; speech and language therapy summer session. *K.K. v. Washington Township Board of Education*, 94 N.J.A.R.2d (EDS) 171.

12-year old student was given an emergency relief due process hearing and ordered to undergo a Child Study Team Evaluation. *Quinton Township Board of Education v. S.W.*, 94 N.J.A.R.2d (EDS) 130.

Petitioner's claim barred; settlement agreement. *J.L. v. Elizabeth Board of Education*, 94 N.J.A.R.2d (EDS) 119.

Application by parents for emergent relief to return their emotionally disturbed daughter to high school transitional program pending hearing was denied. *S.H. v. Lenape*, 93 N.J.A.R.2d (EDS) 87.

Mother's changing her residence precluded entitlement to due process hearing challenging refusal to place son as tuition student. *N.A. v. Willingboro Board of Education*, 92 N.J.A.R.2d (EDS) 19.

#### Law Review and Journal Commentaries

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



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

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

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

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

(b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

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

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

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

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

(d) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days

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

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

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

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

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

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

Rewrote the section.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

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

#### Case Notes

State regulatory requirement that special education students removed from placement for disciplinary reasons for more than 10 cumulative or consecutive school days in a school year be provided services enabling them to "progress appropriately" in curriculum and "advance appropriately" toward individual goals did not violate students' right under the

Individuals with Disabilities Education Act (IDEA) to free appropriate public education (FAPE); language at issue mirrored federal regulations, and appropriate progress and advancement amounted to "meaningful benefit" involving "significant learning," precisely the objective of a FAPE. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

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

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

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

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

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

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

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

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

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

School board was entitled to emergency relief to continue student's suspension pending further hearing on the matter. *Brick Township Board of Education v. R.I.*, 96 N.J.A.R.2d (EDS) 107.

Student suspended for posing threat to others could not return without reevaluation. *Englewood Board v. C.M.*, 95 N.J.A.R.2d (EDS) 112.

Handicapped student's suspension upheld. *Deptford Township Board of Education v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Fight leading to disciplinary suspension not related to student's educational disability. *Deptford v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Expulsion; initial evaluation by child study team. *Edison Board of Education v. R.H.*, 94 N.J.A.R.2d (EDS) 35.

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

### 6A:14-2.9 Student records

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

(b) If the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of or referral by the district board of education, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge according to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if it does not meet the standards that apply to the education provided by the district board of education.

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

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

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

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

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

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

the discretion of a court or an administrative law judge, may not be reduced if the conditions in (d)1 and 2 below are found to exist:

1. The parent is illiterate and cannot write in English;
2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;
3. The school prevented the parent from providing such notice; or
4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

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

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

In (a), inserted a reference to early childhood programs; and rewrote (b). Amended by R.2006 d.315, effective September 5, 2006.

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

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

#### Case Notes

Neither New Jersey statute precluding local educational agency's (LEA's) placement of disabled student in sectarian school, nor its implementing regulations, apply to unilateral parental placements, for purpose of determining whether such placements are reimbursable if LEA is found to have failed to provide free and appropriate public education (FAPE) required under IDEA. *Individuals with Disabilities Education Act*, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq. *L.M., a minor child, by his parents, H.M. and E.M. v. Evesham Township Board of Education*, 256 F.Supp.2d 290.

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

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

### SUBCHAPTER 3. SERVICES

#### Case Notes

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

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

(a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this

subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.

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

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

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

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

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

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

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

i. Consultation with school staff and parents;

ii. Training of school staff; and

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

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

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

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

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

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

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

**Case Notes**

Modifying individualized educational program without consulting child study team was not improper. *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ.*, C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

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

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

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

Child study team evaluation requested by one parent was not required for progressing student in joint custody after divorce when opposed by other parent. *R.F. v. Saddle Brook Board*, 95 N.J.A.R.2d (EDS) 187.

School district did not improperly abolish Child Study Team. *Mullin v. Boonton Town Board of Education*, 94 N.J.A.R.2d (EDU) 583.

Parent must allow child with reading disabilities to be evaluated by child study team. *Board of Educ. of Voorhees Tp. v. S.W.*, 93 N.J.A.R.2d (EDS) 107.

A guidance counsellor is not automatically a member of the child study team, which consists of the school psychologist, social worker and a learning disabilities teacher-consultant (citing former N.J.A.C. 6:28-1.3). *Childs v. Union Twp. Bd. of Ed.*, 3 N.J.A.R. 163 (1980), affirmed per curiam Dkt. No. A-3603-80 (App.Div.1982).

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

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

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

(c) The case manager shall:

1. Be knowledgeable about the student's educational needs and program;

2. Be knowledgeable about special education procedures and procedural safeguards;
3. Have an apportioned amount of time for case management responsibilities; and
4. Be responsible for transition planning.

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

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

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

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

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

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

3. The procedures shall include:

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

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

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

- iv. Other educational action, as appropriate.

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



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

(c) The staff of the general education program shall maintain written documentation, including data setting forth the

type of interventions utilized, the frequency and duration of each intervention, and the effectiveness of each intervention.

1. When it is determined through analysis of relevant documentation and data concerning each intervention utilized that interventions in the general education program have not adequately addressed the educational difficulties, and it is believed that the student may have a disability, the

student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

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

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

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

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

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

- i. Review the Part C Early Intervention System Individualized Family Service Plan;
- ii. Provide the parents written district registration requirements;
- iii. Provide the parents written information on available district programs for preschool students, including options available for placement in general education classrooms; and
- iv. Provide the parent a form to utilize to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility.

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

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

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

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

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

5. For students ages five to 21, when the suspected disability is a disorder of voice, articulation and/or fluency only, the decision to evaluate and the determination of the nature and scope of the evaluation shall be according to (e) above, except that the meeting shall include the speech-language specialist, the parent and the general education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs.

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

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

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

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

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

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

In (e), rewrote the introductory paragraph.

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

#### Case Notes

Requirements of regulations under Individuals with Disabilities Act (IDEA) that each state have on file with Secretary of Education description of how "child find" policies and procedures will be monitored to ensure that the state educational agency (SEA) obtained information on number of children identified within each category of disability, information adequate to evaluate effectiveness of those policies and procedures, and description of method used by state to determine which children were receiving special education and related services were not met by state regulations merely mandating that each school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Education Act (IDEA) that each state have policies and procedures to ensure that practical method for locating disabled students be developed; neither IDEA nor its regulations established any particular "child find" method to be used, or require states to establish uniform methods. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations which failed to include portions of the Individuals with Disabilities Education Act (IDEA) or its regulations setting forth filing requirements in connection with "child find" requirements were impermissibly inconsistent with federal standard, despite state's contention that filing requirements applied only to state and not to local school districts, where result of failure to incorporate federal standard in regulations was lack of public awareness of applicable standards and how standards were applied. *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-3.4 Evaluation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Be conducted in the language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to do so;
2. Apply standards of validity, reliability and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment;
3. Include, where appropriate, or required, the use of a standardized test(s) which shall be:
  - i. Individually administered;
  - ii. Valid and reliable;
  - iii. Normed on a representative population; and
  - iv. Scored as either standard score with standard deviation or norm referenced scores with a cutoff score;
4. Include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child with limited English proficiency, assessment of the student's communication needs, and assessment of the need for assistive technology devices and services. Each of the following components shall be completed by at least one evaluator:
  - i. A minimum of one structured observation by one evaluator in other than a testing session;
    - (1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the general education classroom;
    - (2) In the case of a student of preschool age, a child study team member in an environment appropriate for a child of that age;
  - ii. An interview with the student's parent;
  - iii. An interview with the teacher(s) referring the potentially disabled student;
  - iv. A review of the student's developmental/educational history including records and interviews;
  - v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and

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

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

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

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

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

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

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

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

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

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

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

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

i. Whether the student has a specific learning disability;

- ii. The basis for making the determination;
- iii. The relevant behavior noted during the observation;
- iv. The relationship of that behavior to the student's academic performance;
- v. Educationally relevant medical findings, if any;
- vi. If a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
- vii. The determination concerning the effects of environmental, cultural or economic disadvantage;
- viii. Whether the student achieves commensurate with his or her age;
- ix. If a response to scientifically based interventions methodology is utilized, the instructional strategies utilized and the student-centered data collected with respect to the student; and
- x. Whether there are strengths or weaknesses, or both, in performance or achievement relative to intellectual development in one of the following areas that require special education and related services;

- (1) Oral expression;
- (2) Listening comprehension;
- (3) Written expression;
- (4) Basic reading skill;
- (5) Reading fluency skills;
- (6) Reading comprehension;
- (7) Mathematics calculation; and
- (8) Mathematics problem solving;

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

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

- i. Ensure that such methodology includes scientifically based instruction by highly qualified instructors, and that multiple assessments of student progress are included in the evaluation of the student;
- ii. Not be required to include more than the assessment conducted pursuant to the district's response

to scientifically based intervention methodology in the evaluation of a student; and

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

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

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

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

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

Added (i).

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

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

Rewrote the section.

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

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

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

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

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

In (e), Amended the NJAC reference.

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

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

Rewrote the section.

#### Case Notes

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

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

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



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

Juvenile's confession was not rendered inadmissible; police interrogation was not interpreted for Spanish-speaking guardian. *State in Interest of J.F.*, 286 N.J.Super. 89, 668 A.2d 426 (A.D.1995).

Former N.J.A.C. 6:28-3.5(e)8 defining "pre-school handicapped" set aside as impermissibly narrowing statutory language and frustrating statutory policy. In re: *Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985)*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Treatment of mainstreaming concept under former N.J.A.C. 6:28-2.1. *O'Lexy v. Bd. of Ed., Deptford Twp., Gloucester Cty.*, 1972 S.L.D. 641.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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.

#### Law Review and Journal Commentaries

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

### 6A:14-3.8 Reevaluation

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

evaluation is conducted sooner than three years from the previous evaluation as set forth above, the reevaluation shall be completed in accordance with the timeframes in (e) below.

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

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

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

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

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

- i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);
- ii. The present levels of academic achievement and functional performance and educational and related developmental needs of the student;
- iii. Whether the student needs special education and related services, and the academic, developmental, functional and behavioral needs of the student and how they should appropriately be addressed in the students IEP; and
- iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

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

- i. Shall provide notice according to N.J.A.C. 6A:14-2.3 to the student's parents of that determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and
- ii. Shall not be required to conduct such an assessment unless requested by the student's parents;

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

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

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

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

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

(f) When a reevaluation is completed:

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

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

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

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

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

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

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

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

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

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

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

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

### Case Notes

There was no significant change in student's placement; board of education was not obligated to secure new placement and develop new individualized education plan upon student's expulsion. *Field v. Haddonfield Bd. of Educ.*, D.N.J.1991, 769 F.Supp. 1313.

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, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

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

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

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

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

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

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

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

6. Recreation shall be provided by certified school personnel.

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

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

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

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

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

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

(b) School personnel may give advice to parents regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

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

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

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

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

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

**SUBCHAPTER 4. PROGRAMS AND INSTRUCTION****6A:14-4.1 General requirements**

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

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

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

(d) District board of education operated special class programs for preschoolers with disabilities shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of student instruction, with the following exception:

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

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

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

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

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

8. Consideration is given to:

i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;

ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and

iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class;

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

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

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

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

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

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

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

Added (b).

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

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

In (a)2, substituted "general education" for "regular" throughout; rewrote (a)4; in (a)7, substituted "a student with a disability" for "disabled" and deleted "and" at the end; added (a)9 through (a)11 and substituted ";" for "." at (a)8iii.

### Case Notes

Failure to mainstream to maximum extent may not necessarily mean that school has discriminated on basis of handicap in violation of the Rehabilitation Act. *Oberti 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 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 v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

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

School district improperly failed to consider less restrictive placements. *Oberti 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 v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Behavior problems during kindergarten year were not basis for deciding to place child in segregated special education class. *Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

Individuals with Disabilities Education Act imposes obligations on school districts regarding placement of disabled children in regular classrooms. *Oberti 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 v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

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

State board's guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void as improper rulemaking. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) affirmed as modified 105 N.J. 587, 523 A.2d 655 (1987).

Special student's babysitter's location used to meet legal requirement of placing student in appropriate educational setting closest to student's home. *Upper Freehold Regional School District v. K.B.*, 97 N.J.A.R.2d (EDS) 50.

In-district placement of special education student was appropriate where placement conferred some educational benefit and constituted least restrictive environment. *K.H. v. Wayne Township Board of Education*, 96 N.J.A.R.2d (EDS) 226.

Residential placement was ordered for classified student who had regressed in day placement. *J.M. v. Pemberton Borough Board of Education*, 96 N.J.A.R.2d (EDS) 163.

Residential placement was necessary to meet needs of trainable mentally retarded student. *R.H. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDS) 133.

Request for residential placement properly denied when disabled student's placement at day school conferred educational benefits in least restrictive environment. *P.G. v. Linwood Board of Education*, 96 N.J.A.R.2d (EDS) 99.

Requirement of score over 50 on standardized test for admission into eighth grade Spanish class was reasonable and not discriminatory. *M.R. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 31.

Mentally retarded child transferred from private out-of-state placement when appropriate alternate placement found in-state. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (DDD) 1.

Out-of-state placement found most appropriate for mentally retarded child until specialized day school and community residential placements can be arranged. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (EDS) 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6A:14-4.3 Program options

(a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. Single subject resource programs outside the general education class;
2. A special class program in the student's local school district;
3. A special education program in another local school district;
4. A special education program in a vocational and technical school;
5. A special education program in the following settings:
  - i. A county special services school district;
  - ii. An educational services commission;

provided within 10 days of the date of the IEP meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(c) Prior to a parent withdrawing a student with a disability from a receiving school, the parent shall request that the district board of education convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k).

(d) A student with a disability placed in a receiving school by the district board of education shall receive a diploma from the district board of education if the requirements of N.J.A.C. 6A:14-4.11 are met.

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

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

In (d), amended N.J.A.C. reference.

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

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

Rewrote the introductory paragraph of (a) and (d); at (a)1 and (b), substituted "within 10 days of the date of the IEP meeting" for "without delay"; in (b) and (c), substituted "6A:14-2.3(k)" for "6A:14-2.3(i)2".

#### 6A:14-7.8 Fiscal management

(a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual student placement approval.

(b) The district board of education shall establish a written contract for each student with a disability it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the student with a disability. For students placed in an approved private school for students with disabilities, the district board of education shall use the mandated tuition contract according to N.J.A.C. 6A:23.

(c) Daily transportation costs shall be paid by the district board of education.

(d) Transportation for students in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6A:27-5.2.

(e) All approved private schools for students with disabilities shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6A:23.

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

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

Amended NJAC references throughout.

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

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

In the first sentence of (b), substituted "student with a disability" for "disabled student"; in the last sentence of (b) and in (e), substituted "students with disabilities" for "the disabled".

#### 6A:14-7.9 Records

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6A:32 pertaining to student records. In addition:

1. All student records maintained by a receiving school under this subchapter shall be returned to the responsible district board of education when a student's program is terminated.

2. Requests for access to student records by authorized organizations, agencies or persons as stated in N.J.A.C. 6A:32 shall be directed to the chief school administrator or his or her designee of the district board of education having responsibility for the student with a disability.

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained in accordance with N.J.A.C. 6A:23 and made available to the district board of education upon request. Habitual tardiness or prolonged absences of five or more consecutive days shall be reported in writing to the chief school administrator of the district board of education or his or her designee.

(b) Student progress reports shall be submitted at least three times a year or as stipulated in the contract between the district board of education and the receiving school.

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

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

In (a)3, added "or his or her designee" at the end.

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

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

In (a)3, amended NJAC reference.

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

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

In the introductory paragraph of (a) and in (a)2, substituted "6A:32" for "6:3-6"; in (a)3, inserted "of five or more consecutive days"; in (b), added "between the district board of education and the receiving school" at the end.

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

(a) The Department of Education shall monitor approved private schools for students with disabilities according to N.J.A.C. 6A:14-9.1. On site monitoring shall be conducted in accordance with the schedule established by the Department.

(b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited, to the following:

1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated with State or Federal statute or rules and/or implementation of the corrective action plan.

i. An approved private school which is issued a conditional approval status may not accept new students;

2. The Department of Education may revoke approval effective at the end of a school year, when chronic or systemic noncompliance is demonstrated; and

3. The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(c) An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

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

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

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

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

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

In (a), substituted "six" for "four" preceding "years".

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

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

In (a), substituted "students with disabilities" for "the disabled" and "in accordance with the schedule established by the Department" for "at least every six years".

## 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. 6A:17-3 and the requirements of this chapter.

(b) Each State agency operating approved programs shall develop a special education plan according to N.J.A.C. 6A:14-1.2 which additionally shall include:

1. A list of all State and Federal funding sources; and
2. A separate educational budget statement for each State facility.

(c) All students with disabilities shall receive an educational program and related services based on an IEP. A student who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the IEP incorporated into the plan.

(d) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for nondisabled students. Educational programs shall operate at least 220 days each year.

(e) Each district board of education shall provide mandated student records according to N.J.A.C. 6A:32 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent shall receive notification of the release of these records to the facility.

Permitted records according to N.J.A.C. 6A:32 shall be released only with consent.

(f) For a student in residence in a State facility, the responsible district board of education shall maintain the educational records sent by the State facility according to N.J.A.C. 6A:32.

(g) For a student in residence in a State facility, the responsible district board of education shall facilitate the entry of the student into the local district program, as appropriate.

(h) When a student is placed in a State facility by a public agency other than the district board of education, the State shall provide a program according to the following:

1. If the student is a student with a disability, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current individualized education program.

2. If the student is not currently classified as a student with a disability, or if the State facility does not have current school records, within 30 calendar days the State facility shall review the student's educational status and determine if referral to the child study team is required.

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

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

In (e), deleted a reference to adult student.

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

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

In (a), amended NJAC reference.

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

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

In (e) and (f), substituted "6A:32" for "6:3-6"; in (h)1 and (h)2, substituted "a student with a disability" for "disabled".

### Case Notes

N.J.A.C. 6:28-8.1(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

Approved in-state school and not out-of-state school was appropriate placement for 20-year-old autistic student. J.R. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 12.

### 6A:14-8.2 Procedural safeguards

(a) Mediation shall be available for a student in a State facility according to N.J.A.C. 6A:14-2.6.

(b) A request for a due process hearing for a student in a State facility shall be made to the Department of Education according to N.J.A.C. 6A:14-2.7.

(c) Discipline of students with a disability shall be according to N.J.A.C. 6A:14-2.8.

(d) Surrogate parents shall be appointed according to N.J.A.C. 6A:14-2.2.

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

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

In (c), substituted "students with a disability" for "disabled students".