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).

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

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

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

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

SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

6A:14-2.1 General requirements

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

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

Amended by R.2000 d.230, effective June 5, 2000.
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).
In (b), deleted reference to adult students.
Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).
In (b), updated the N.J.A.C. reference for student records rules; deleted (c).

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The parent cannot be located after reasonable efforts;

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

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

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

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

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

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

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

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

3. Not be replaced without cause;

4. Be at least 18 years of age; and

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

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

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

Natural parent of a child who was in the custody of the Division of Youth and Family Services did not retain the right to make educational decisions for the child; rather, the resource family reserved the right to address the special education matters pending before the Office of Administrative Law (OAL) unless he or she so declined, at which time the appointed surrogate would then be empowered to address the pending matters before the OAL. S.S. ex rel. K.S. v. Lawnside Borough Bd. of Educ., OAL DKT. EDS 6093-07 and EDS 6094-07, 2007 N.J. AGEN LEXIS 776, Final Decision (October 15, 2007).

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 that ten days in a school year in suspensions not constituting change in placement did not infringe upon parents' rights under the Individuals with Disabilities Education Act (IDEA), where challenged state regulation mirrored federal regulations governing same subject matter. Baer v. Klagholz, 771 A.2d 603 (2001).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-2.9 Student records

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.2000 d.230, effective June 5, 2000.
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).
In (a), inserted a reference to early childhood programs; and rewrote (b).
Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).
In (a) and (b), substituted "students with disabilities" for "the disabled"; in (b), inserted "for placements in unapproved schools" in the last sentence; in (c)3, updated the N.J.A.C. reference; in (d), rewrote the introductory paragraph.

Case Notes

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

Where a district offered FAPE to a student, it was unnecessary to analyze further whether the alternative program that the parents unilaterally moved the student to was appropriate because, while the student did well in the alternative program and the program offered many supports, the appropriateness of an IEP was not determined by a comparison of the private school and the program proposed by the district; rather, the pertinent inquiry was whether the district's IEP offered FAPE and the opportunity for meaningful educational benefit