

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(e). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

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

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

3. **Voice:** On a formal rating scale, the student performs below the normed level for voice quality, pitch,

resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

(c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(i)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent or adult student.

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

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

Case Notes

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

6A:14-3.7 Individualized education program

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

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

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(i)2 for students classified eligible for special education and related services or according to N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.

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

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

2. Consider the results of the initial evaluation or most recent evaluation of the student;

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

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

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

6. Consider the communication needs of the student;

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

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

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

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

1. A statement of the student's present levels of educational performance, including, but not limited to:

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

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

2. A statement of measurable annual goals that shall be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs. Such measurable annual goals shall include benchmarks or short-term objectives related to:

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

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

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

i. To advance appropriately toward attaining the annual goals;

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

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

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

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

i. If the IEP team determines that the student shall not participate in a particular Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student and a statement of how that student shall be assessed;

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

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

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

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

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

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

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

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

- (1) Instruction;
- (2) Related services;
- (3) Community experiences;
- (4) The development of employment and other post-school adult living objectives; and
- (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;

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

12. The person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate. If the student with educational disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;

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

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

15. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress.

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

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

(g) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(h) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.

1. The annual review of the IEP for a preschool student with educational disabilities shall be completed by June 30 of the student's last year in the preschool program.

2. The annual review of the IEP for an elementary school student with educational disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.

(i) The IEP team shall review:

1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;

3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;

4. The student's anticipated needs; or

5. Other relevant matters.

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

(k) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is

obtained or a due process hearing decision is issued. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3(e) and (f).

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

In (d)3, rewrote the introductory paragraph.

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 (IDEA). *Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ.*, C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

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

"Progress key" method of setting out educational objectives and student's progress toward those objectives, as employed in Individual Education Program (IEP) prepared by school district for severely disabled student, did not satisfy procedural requirements of Individuals with Disabilities Education Act (IDEA) and New Jersey law with respect to provision of statement of annual goals with specific measurable objectives, and of evaluation criteria related to those goals and objectives, despite fact that "progress key" method had been approved by state Department of Education. *D.B. v. Ocean Tp. Bd. of Educ.*, 985 F.Supp. 457 (D.N.J. 1997).

School board required transportation only from child's home. *I.D. and M.D. v. Board of Education of the Township of Hazlet*, 97 N.J.A.R.2d (EDS) 33.

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

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

School district improperly failed to consider less restrictive placements. *Oberti 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 placement of 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.

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.

Regulation governing education of handicapped students impermissibly narrowed scope of Individuals with Disabilities Education Act (IDEA) with respect to provision of assistive technology and services; regulation failed to expressly or impliedly incorporate federal requirements and did not adequately define crucial terms. *Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6, and 4.3*, 305 N.J.Super. 389, 702 A.2d 838 (A.D. 1997).

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

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

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

Parents awarded private education reimbursement following improper placement by child study team entitled to interest on expenses from date of disbursement. *Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty.*, 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

Regulations of the State Board of Education adopted. *New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. When a reevaluation is conducted sooner

at the request of a parent or teacher, or because conditions warrant, the reevaluation shall be completed without undue delay.

(b) The IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data according to N.J.A.C. 6A:14-3.4(a)2 and administer such tests and procedures needed to determine:

i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

ii. The present levels of performance and educational needs of the student;

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

iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

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

i. Shall provide notice according to N.J.A.C. 6A:14-2.3(e) and (f) to the student's parents of that determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and

ii. Shall not be required to conduct such an assessment unless requested by the student's parents;

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

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

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

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

(f) When a reevaluation is completed:

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

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

Case Notes

There was no significant change in student's placement; board of education was not obligated to secure new placement and develop new individualized education plan upon student's expulsion. *Field v. Had-donfield 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 emer-gent relief in form of home instruction. *Mount Laurel Board v. C.S.*, 95 N.J.A.R.2d (EDS) 110.

Student with aggressive behavior was withdrawn from school pending re-evaluation in order to protect fellow students. *Brick Township v. P.M.*, 95 N.J.A.R.2d (EDS) 83.

Scores and assessments established need to change student's classification to multiply handicapped. *L.R. v. North Plainfield*, 95 N.J.A.R.2d (EDS) 72.

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

Reevaluation of disabled child was proper. *P.B. v. Wayne Board of Education*, 94 N.J.A.R.2d (EDS) 69.

Reclassification of multiply handicapped child as eligible for day training was improper. *A.V. v. Branchburg Board of Education*, 94 N.J.A.R.2d (EDS) 62.

Returning child to mainstream school was appropriate. *D.F. v. Carteret Board of Education*, 94 N.J.A.R.2d (EDS) 19.

Returning child to mainstream school; child was no longer multiply handicapped. *D.F. v. Carteret Board of Education*, 94 N.J.A.R.2d (EDS) 19.

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

6A:14-3.9 Related services

(a) Related services including, but not limited to, counseling, occupational therapy, physical therapy and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.
2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.
4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and/or licensed therapist in accordance with all applicable State statutes and rules.

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

6. Recreation shall be provided by certified school personnel.

7. Transportation shall be provided as follows:

i. The district board of education shall provide transportation as required in the IEP. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school;

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

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

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

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

(b) 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.

Case Notes

Parent of disabled child was not entitled to reimbursement for private physical therapy where sufficient progress had been made in school therapy. *C.F. v. West Milford Board of Education*, 96 N.J.A.R.2d (EDS) 186.

School board was not required to provide nurse to change student's tracheotomy tube during school as related service under Individuals with Disabilities Education Act (IDEA), as that service fell within Act's medical services exclusion. *A.F. v. Toms River Board of Education*, 96 N.J.A.R.2d (EDS) 116.

Availability of comparable services at public school precludes school district's financial support of sign language interpreter at private school attended by auditory handicapped student. *M.S. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDS) 28.

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.

School district was under continued obligation to provide transportation as a related service to handicapped student even though costs had escalated. *D.P. v. Mantua Township Board*, 95 N.J.A.R.2d (EDS) 218.

Free and appropriate education in public school precluded tuition and transportation for non-approved private school. *A.S. v. Hasbrouck Heights*, 95 N.J.A.R.2d (EDS) 162.

Student with breathing difficulties in cold weather not entitled to transportation during winter months. *A.G. v. Glen Ridge Board*, 95 N.J.A.R.2d (EDS) 144.

Transportation from home to private sectarian school which disabled students attended by parental choice was not available. *A.K. v. Teaneck Board*, 95 N.J.A.R.2d (EDS) 116.

School aide not necessary for neurologically impaired student. *N.B. v. West Orange Board of Education*, 94 N.J.A.R.2d (EDS) 205.

Demand that the Board of Education pay the cost of one-to-one aides for a 20-year old student with cerebral palsy and mental retardation was dismissed. *D.R. v. East Brunswick Board of Education*, 94 N.J.A.R.2d (EDS) 145.

Private nursing care; not a related service under the Individuals with Disabilities Act. *L.M. v. East Brunswick Township Board of Education*, 94 N.J.A.R.2d (EDS) 79.

"Repositioning" following surgery was "related service" for 6-year-old child suffering from cerebral palsy. *M.S. v. Barnegat Township Board of Education*, 93 N.J.A.R.2d (EDS) 16.

Summer placement at private school was necessary related service for 18-year-old student. *C.M. v. Cherry Hill Board of Education*, 92 N.J.A.R.2d (EDS) 156.

Board of education not required to provide outside psychotherapy; counseling could be provided within school during school day. *Clifton Board of Education v. M.L.*, 92 N.J.A.R.2d (EDS) 60.

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, change 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 shall be at least as long as that established for nondisabled students.

(d) 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.

(e) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county offices.

(f) Physical education services, specially designed if necessary, shall be made available to every student with a disability age five through 21, including those students in separate facilities.

(g) When a student with a disability transfers from one New Jersey school district to another or from an out-of-State school district to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP.

1. If the parents and the district agree, the IEP shall be implemented as written.

2. The student shall be provided a program through an interim IEP that is consistent with the current IEP when:

i. The district disagrees with the current evaluation and/or the current individualized education program;

ii. The parent disagrees with the proposed revisions to the individualized education program; and/or

iii. Supplemental evaluations are required.

3. When the records from the previous school district are incomplete or not available, the district shall immediately place the student into an interim educational program consistent with the available information. The district shall complete any evaluations and develop or revise the IEP without delay.

(h) When the IEP of a student with a disability does not describe any restrictions, the student shall be included in the regular school program provided by the district board of education.

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

1. When instruction in health, industrial arts, fine arts, music, home economics, and other regular education programs is provided to groups consisting solely of students with disabilities, the size of the groups and age range shall conform to the requirements for special class programs described in this subchapter. An exception to the age range and group size requirements may be requested by writing to the Department of Education through the county office according to N.J.A.C. 6A:14-4.10.

2. When students with disabilities participate in physical education, intramural and interscholastic sports, non-academic and extracurricular activities in groups consisting solely of students with disabilities, the age range and group size shall be based on the nature of the activity, needs of the students participating in the activity and the level of supervision required.

(i) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-10, 11, 14, and 14.1 and this chapter.

(j) Each district board of education shall ensure that all students with disabilities have available to them the variety of educational programs and services available to nondisabled students.

(k) The district board of education shall provide the parent and/or adult student with the opportunity to observe the proposed educational placement prior to implementation of the IEP.

Case Notes

Former standard of service for local school bds. incorporated into the Federal Education of the Handicapped Act. Bd. of Educ. of E. Windsor Regional School v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Regulatory description of appropriate educational program being one in the least restrictive environment found to mean least even in which educational progress rather than regression can take place. Bd. of Educ. of E. Windsor Regional School District v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Focus in determining appropriateness of program is on program offered. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Petition regarding responsibility for costs of special education student's academic program was dismissed for lack of jurisdiction; allocation of costs was provided for in contract, and Commissioner of Education cannot decide issues of contract law. Cherry Hill v. Borough of Haddonfield, 96 N.J.A.R.2d (EDU) 1032.

Handicapped child entitled to same number of school hours offered to non-handicapped children of same age. D.S. v. Cresskill Board of Education, 96 N.J.A.R.2d (EDS) 379.

Failure to show that special education student had substantially regressed during the summer supported denial of extended school year services. S.T. v. Ewing Board of Education, 96 N.J.A.R.2d (EDS) 283.

Adverse outcome of prior federal lawsuit brought by handicapped former student against school board for failure to comply with IEP barred current action by student against board. E.A. v. Willingboro Township Board of Education, 96 N.J.A.R.2d (EDS) 113.

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

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

Educational placement out of district was appropriate for perceptually impaired student's educational needs despite parent's noncooperation. P.M. v. Brick Township Board, 95 N.J.A.R.2d (EDS) 201.

Residential placement for multiply handicapped child with various diagnosed disorders ranging from loving to potentially injurious was only appropriate placement in least restrictive environment. Z.D. v. Fort Lee Board v. 95 N.J.A.R.2d (EDS) 193.

Services of education expert for special education child with maladaptive behavior were no longer necessary. Services of B.L. v. Englewood City Board, 95 N.J.A.R.2d (EDS) 125.

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

Placement out-of-district was not appropriate for handicapped child when opportunities in district were equal. L.A. v. Union County, 95 N.J.A.R.2d (EDS) 78.

Provision of all special education services based upon 180-day school year. S.M. v. Township Board of Education, 94 N.J.A.R.2d (EDS) 176.

Residential school placement; behavioral problems manifested only in the home environment. R.W. v. Howell Township Board of Education, 94 N.J.A.R.2d (EDS) 39.

Multiply handicapped student; transportation by bus company other than one retained by school board. N.S. v. Trenton Board of Education, 94 N.J.A.R.2d (EDS) 36.

Removal of an emotionally disabled child from a private school and placing him in public school was not detrimental. In the Matter of J.C., 94 N.J.A.R.2d (EDS) 15.

Placement of an emotionally handicapped and learning disabled child in a special education program was warranted. Ewing Township Board of Education v. J.R., 94 N.J.A.R.2d (EDS) 11.

Constant attention by a registered or licensed practical nurse required by a severely handicapped student was a medical need. C.F. v. Roxbury Township Board of Education, 94 N.J.A.R.2d (EDS) 8.

School board would not be liable for expenses of student's attendance at private unapproved placement. C.D. v. Wanaque Board of Education, 93 N.J.A.R.2d (EDS) 304.

Program provided by school board; appropriate for child's learning disability. J.M. v. Manville Bd. of Educ., 93 N.J.A.R.2d (EDS) 100.

Board of education had appropriately addressed visually impaired 19-year-old's educational, occupational therapy, mobility and other needs; no obligation to provide special education services following graduation. L.I. v. Montville Board of Education, 93 N.J.A.R.2d (EDS) 1.

Changing placement of 10-year-old Downs Syndrome student to in-district special education class was not warranted. Lakewood Board of Education v. M.C., 92 N.J.A.R.2d (EDS) 244.

Petitioners' action to require local school board to pay residential costs and tuition retroactively denied. M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ., 9 N.J.A.R. 179 (1985).

Regulations contain standards for provision of remedial and auxiliary services to non-public school students; future contract for such services forbidden due to contractor's financial standing and fiscal practices. New Jersey Education Assn. v. Essex Cty. Educational Services Commission, 5 N.J.A.R. 29 (1981).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation for the provision of auxiliary, diagnostic and therapeutic services to non-public school pupils, without seeking the review and approval of the State Board or the Commissioner. Atty.Gen.F.O.1981, No. 1.

6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Annually, the board of education shall submit to the Department of Education a report describing the programs and services provided under this subchapter.

(b) The end of the year report shall include the numbers of nonpublic school students provided each program or service and such other information as may be required by the Department of Education.

6A:14-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of disabled students

(a) According to N.J.S.A. 18A:46-14, students with disabilities may be placed in accredited nonpublic schools which are not specifically approved for the education of disabled students with the consent of the Commissioner or by an order of a court of competent jurisdiction, except preschool age students with disabilities may be placed by the district board of education in early childhood programs operated by agencies other than a district board of education according to N.J.A.C. 6A:14-4.3(c).

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the on-going, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a through h cannot be provided to this student;

3. The most appropriate placement for this student is this nonpublic school;

4. The program to be provided shall meet the requirements of the student's individualized education program;

5. The student shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c through g. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Statewide assessment and graduation requirements shall apply. Participation in Statewide assessment and/or exemptions from graduation requirements

shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.6(d)5 and 7.

i. All personnel providing either special education programs according to N.J.A.C. 6A:14-4.4 through 4.7, or related services according to N.J.A.C. 6A:14-3.8 shall hold the appropriate educational certificate and license, if one is required, for the position in which they function;

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting authority;

iii. All substitute teachers and aides providing special education and related services shall be employed according to N.J.A.C. 6:11-4.5, County substitute certificate, and 4.6, Paraprofessional approval;

6. The student shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-4.2 and 6.6, and N.J.A.C. 6A:14-1 through 4. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Exemptions shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.6(d)5 and 8;

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and Federal antidiscrimination statutes;

9. Written notice has been provided to the student's parent regarding this placement which has included a statement that:

i. The nonpublic school is not an approved private school for the handicapped and that the local school district assumes the ongoing monitoring responsibilities for the student's program;

ii. No suitable special education program could be provided to this student pursuant to N.J.S.A. 18A:46-14; and

iii. This is the most appropriate placement available to this student;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6A:14, 1:6A and 6:3-6.

(c) In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the administrative law judge assigned to the case when:

1. The administrative law judge makes a factual determination that the certifications in (b) above are met; or

2. The district board of education and the parent agree to a settlement of the matter which would include placement under N.J.S.A. 18A:46-14 and the administrative law judge approves the settlement. Approval may be granted if the district board of education makes the certifications in (b) above. A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through the county office.

(d) The district board of education shall be responsible to monitor the student's placement at least annually to ensure the program's compliance with the certifications.

Case Notes

Continued placement of perceptually impaired student in otherwise appropriate private school was required until program in public school provided some educational benefit. *K.G., A Minor v. Haddonfield Board*, 95 N.J.A.R.2d (EDS) 167.

Free and appropriate education in public school precluded tuition and transportation for non-approved private school. *A.S. v. Hasbrouck Heights*, 95 N.J.A.R.2d (EDS) 162.

Present public school environment was more appropriate for neurologically impaired child than out-of-district placement. *A.H. v. Hamburg Board*, 95 N.J.A.R.2d (EDS) 52.

Handicapped student could not be placed in school not able to provide student with appropriate educational services. *B.G. v. Manasquan Public School System*, 95 N.J.A.R.2d (EDS) 22.

Placement of neurologically impaired student in non-public school was not appropriate absent required certification. *B.G. v. Manasquan*, 95 N.J.A.R.2d (EDS) 22.

Reimbursement of parents for tuition paid for handicapped student's placement in nonapproved private school was justified. *C.D. v. Wanaque*, 93 N.J.A.R.2d (EDS) 154.

Board of education could have provided appropriate placement for 12-year-old student; no reimbursement for parents' unilaterally enrolling student in private school. *J.S. v. Blairstown Board of Education*, 93 N.J.A.R.2d (EDS) 81.

No private school reimbursement; board of education offered free and appropriate education for communication handicapped student. *V.G. v. Jefferson Township Board of Education*, 92 N.J.A.R.2d (EDS) 212.

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

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

Parents not entitled to reimbursement of tuition expenses for unilateral placement of child in private school. *K.S. v. East Brunswick Board of Education*, 92 N.J.A.R.2d (EDS) 159.

Parents not entitled either to placement of child at nonapproved private school nor to reimbursement of tuition. *M.H. v. Union Township Board of Education*, 92 N.J.A.R.2d (EDS) 132.

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

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

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

SUBCHAPTER 7. RECEIVING SCHOOLS

6A:14-7.1 General requirements

(a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for the disabled (that may or may not provide residential services) and public college operated programs for the disabled. Receiving schools shall obtain prior written approval from the Department of Education to provide programs for students with disabilities through contracts with district boards of education.

1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education in this subchapter.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

(b) For a student in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.

(c) Programs for students with disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding student placement shall be made according to N.J.A.C. 6A:14-4.10. Providers of programs under this subchapter shall maintain documentation of this approval.

(d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.

(e) Out-of-State private schools for the disabled shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey students.

(f) The residential component of an approved private school for the disabled shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the State in which the school is located.

(g) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in or shall not be employed by any approved private school for the disabled which serves students with disabilities placed by that district board of education.

Case Notes

Authority to contract for speech therapy services. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

6A:14-7.2 Approval procedures to establish a new receiving school

(a) Prior to the establishment of a receiving school for students with disabilities, an application shall be submitted to the Department of Education according to the following:

1. The applicant shall submit a needs assessment. The Department of Education shall determine if the program to be provided by the receiving school is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the needs assessment.

2. An appeal of the decision to deny approval may be made to the Commissioner of Education according to N.J.A.C. 6:24.

3. The application for approval to establish a receiving school for students with disabilities shall include, but not be limited to:

i. A survey of need indicating the number, age range and types of students with disabilities to be served by the proposed programs/services. Documentation of local school districts surveyed shall be included;

ii. A rationale for each new program;

iii. The projected program for each group of students with disabilities with the same disabling condition including:

(1) The objectives of the program;

(2) The organizational structure, including projected number of personnel by title, job function, and certification;

(3) The administrative policies and procedures;

(4) The nature and scope of the program and services to be offered and a description of the students with disabilities to be served which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session; and

(5) A description of how the core curriculum content standards will be implemented;

iv. A copy of the approval of the facility by the issuing agency including certification of health and fire approval; and

v. An assurance that necessary emergency procedures will be followed; and

4. Additionally, each approved private school for the disabled shall submit:

i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, The Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.) and the Rehabilitation Act (U.S.P.L. 93-112 Section 504); and

ii. A copy of the certificate of incorporation.

(b) The approved private school for the disabled shall submit staffing information which shall include a list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required and the function he or she will perform.

6A:14-7.3 Amendment procedures for receiving schools

(a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided or the location of its facilities by obtaining prior written approval from the Department of Education through its county offices of education.

1. To amend the policies, procedures, nature and scope of the services provided, or increase or decrease the services provided, the approved receiving school shall submit the following:

i. A copy of the revised policy and/or procedure;

ii. A revised description of the scope and nature of the services to be offered according to N.J.A.C. 6A:14-7.2(a)3iii(4); and

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

2. To amend the location of its facilities, an approved private school for the disabled shall submit a copy of the valid health, fire, boiler inspections, occupancy and, if applicable sewerage plant.

(b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for the disabled, the approved private school shall provide written notification to the Department of Education through the county office within seven calendar days of the change.

6A:14-7.4 Annual procedures for private schools for the disabled

(a) Annually, each approved private school for the disabled shall submit fiscal information according to N.J.A.C. 6:20 to the Office of Finance.

(b) Annually, each approved private school for the disabled shall obtain valid certificates of fire inspection and if applicable, health, boiler inspections, occupancy and, if applicable, sewerage plant. Such certificates shall be maintained and shall be available upon request for review by the Department of Education through the county office of education.

Case Notes

Action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for neurologically impaired child, denied. *M.B. Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

School board's failure to follow proper placement procedures deprived parents of free choice in making decision for non-public cost placement under former N.J.A.C. 6:28-4.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

6A:14-7.5 Responsibilities of district boards of education

(a) The educational program of a student with a disability provided through contractual agreements as described in N.J.A.C. 6A:14-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the development and annual review of the IEP and the reevaluation of the student. At least annually, the district board of education shall monitor the implementation of the IEP.

1. For students with disabilities placed in programs described in N.J.A.C. 6A:14-7.1(a), representative(s) of the program and the district board of education shall participate in meeting(s) according to N.J.A.C. 6A:14-2.3(i)2.

(b) When a student with a disability is placed in a receiving school as described in N.J.A.C. 6A:14-7.1(a), the district board of education shall provide written notification to the Department of Education through the county office within 10 calendar days of the placement. Such notification shall include a copy of the student's IEP.

1. A district board of education shall place a student with a disability in a receiving school only when it can assure that the IEP can be implemented in that setting.

2. Prior to placement in the receiving school, a representative of the district board of education and, if possible, the parent shall visit the school.

3. When a district board of education places a student with a disability in an approved residential private school, such placement shall be at no cost to the parent. The district board of education shall be responsible for special education costs, room and board.

4. Placement of a student with a disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education costs. When the student has been placed by a public agency empowered to make such placement, the district board of education shall convene a meeting according to N.J.A.C. 6A:14-2.3(i)2 to revise the IEP as necessary.

(c) The receiving school shall provide written notification to the Department of Education through the county office within 10 calendar days of the student's first day of attendance each school year.

(d) If the approval of a private school for the disabled is removed, a district board of education having a student with a disability placed therein shall immediately begin seeking an alternative, appropriate placement for that student.

Case Notes

Jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child, was in Department of Education. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Disputes regarding proper residential placement of developmentally disabled citizens should be processed as "tested cases" under Administrative Procedure Act (APA). Superior Court, Law Division did not have jurisdiction. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

State's unauthorized placement of child in private school may result in waiver of entitlement to reimbursement by school board. *Board of Education of Borough of Prospect Park v. New Jersey Department of Education, et al.*, 97 N.J.A.R.2d (EDU) 134.

Parents failed to show that out-of-state placement would be less restrictive than current successful placement within district. *P.B. v. Caldwell-West Caldwell Board of Education*, 97 N.J.A.R.2d (EDS) 17.

Record supported contested classification and academic plan. *South Brunswick Board of Education v. J.R.*, 97 N.J.A.R.2d (EDS) 1.

Request for summer camp placement for disabled student was denied where regression was unlikely and camp was primarily recreational. *C.W. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDS) 279.

Residential costs of impaired student in private placement pursuant to civil commitment were not responsibility of school board. *M.M. v. Kinnelon Board*, 95 N.J.A.R.2d (EDS) 120.

Proof; necessity that school district provide compensatory educational services for handicapped student beyond high-school level. *J.G. v. Freehold Regional School District*, 94 N.J.A.R.2d (EDS) 178.