

Parents were not granted relief on behalf of their son with reading, hearing, speech/language, and rhythm disorders and several medical concerns including chronic asthma and anxiety, for temporary placement by the board of education of their son in a special school for the start of his first year of high school, until a determination was made as to an appropriate permanent program and placement. The parents' legal rights were not settled nor was their likelihood of prevailing on the merits of the underlying claim, particularly since the board had been prevented from following through with searches for a placement that incorporated an academic and therapeutic program and support services to address the son's emotional, behavioral, and educational needs and the parents refused to sign releases to allow the son's records to be distributed to possible placement locations. *K.K. ex rel. C.K. v. Summit Bd. of Educ.*, OAL Dkt. No. EDS 09802-08, 2008 N.J. AGEN LEXIS 811, Emergent Relief Final Decision (August 28, 2008).

Board of education's willingness to place 16-year-old student classified as "emotionally disturbed" at a private high school with restriction that student not participate in three football games against home township's schools, was appropriate considering student's past assault against his former football coach. Student would not suffer irreparable harm by missing three games during the football season and, considering the past assault, it might be more harmful to the student if he did play those three games and did not learn that his actions had consequences. *A.R. ex rel. A.R. v. Hamilton Twp. Bd. of Educ.*, OAL Dkt. No. EDS 8370-08, 2008 N.J. AGEN LEXIS 826, Emergent Relief Decision (August 25, 2008).

Emergency relief denied, as student was already enrolled in the summer program, so the matter was really one for reimbursement; in addition, there was no current evidence in the record to show the nature or extent of skill regression by the student during the two-month hiatus from the 10-month Transition to College Program. *T.D. and G.D. ex rel. G.D. v. Winslow Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4871-08, 2008 N.J. AGEN LEXIS 491, Emergent Relief Decision (July 8, 2008).

Emergent relief denied where parents requested that kindergarten student's one-to-one aide remain entirely focused on the student, who suffered from a serious peanut allergy, rather than drawing back into a shadow role and also assisting other students as necessary. Parents did not satisfy the irreparable harm element of the emergent relief test, given the vice-principal's credible testimony that the shift in approach by the aide had not diminished vigilance concerning food safety in the classroom. *D.M. and S.C. ex rel. M.M. v. Howell Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4324-08, 2008 N.J. AGEN LEXIS 349 (June 2, 2008).

Emergency relief denied concerning high school senior's ineligibility to participate as lead in the school musical due to his failing two courses; no evidence existed that the school failed to provide the modifications and accommodations required in his IEP, and the reason the student failed his science and history classes was because he failed to do his homework. *A.P. ex rel. J.T. v. Fair Lawn Bd. of Educ.*, OAL DKT. NO. EDS 3669-08, 2008 N.J. AGEN LEXIS 204, Final Decision (March 25, 2008).

Parents' emergency request for temporary placement of twin daughters requiring speech and language services in a sixth grade mainstream environment with appropriate support was denied where there was no evidence that either child would suffer irreparable educational harm if not placed in the sixth grade during the pendency of the due process petitions. *E.B. and M.B. ex rel. S.B. v. Alpine Bd. of Educ.*, OAL DKT. NO. EDS 12330-07 & EDS 12331-07, 2007 N.J. AGEN LEXIS 833, Emergent Relief Decision (December 21, 2007).

Request for an emergency order amending student's IEP to provide for an extended school year was denied where the parent failed to meet the standards of N.J.A.C. 1:6A-12.1 and could not demonstrate that he could prevail on the claim; student had successfully completed self-contained eighth-grade class. *H.P. ex rel. W.P. v. Cherry Hill Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4662-07, 2007 N.J. AGEN LEXIS 441, Final Decision (July 3, 2007).

Emergency relief for twelfth-grade student to participate in the processional on graduation day was denied, where the student had been

placed in the Alternative Education Program six times during the school year based on his discipline report and was failing English; parent failed to show that the board acted arbitrarily and outside the scope of its discretionary authority in barring the student's participation. *M.H. ex rel. G.S. v. Deptford Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4282-07, 2007 N.J. AGEN LEXIS 408, Final Decision (June 12, 2007).

High school student with lengthy disciplinary history, who was classified as emotionally disturbed, was denied an emergency order permitting him to receive his diploma during graduation ceremonies and attend the senior prom; school board's disciplinary policy permitted it to rescind all graduation-related privileges for misconduct and the policy was uniformly enforced. *T.S. v. Jackson Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4113-07, 2007 N.J. AGEN LEXIS 284, Final Decision (May 25, 2007).

Where a student, who had been in the school district for two years, was failing and had presented behavioral problems, the school district was entitled to emergency relief requiring psychiatric, psychological, educational, social, and speech and language assessments, and ordering the student's parents to cooperate. *Edison Twp. Bd. of Educ. v. M.B. and P.B. ex rel. M.B.*, OAL DKT. NO. EDS 2319-07, 2007 N.J. AGEN LEXIS 181, Final Decision (April 11, 2007).

When analyzing a request for a "stay-put" order, the criteria set forth in N.J.A.C. 1:6A-12.1(e) for granting emergent relief are inapplicable; the federal IDEA stay-put provision in 20 U.S.C.A. 1415 is unequivocal and mandates that "the child shall remain in the then-current educational placement." *R.B. and C.B. ex rel. A.B. v. Great Meadows Reg'l Bd. of Educ.*, OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

Emergency relief granted, ordering the return of a communication impaired seventh-grade student to middle school after he was involved in an incident in which students were running in the hallways, causing a teacher to fall down; parent satisfied all four prongs of the test under N.J.A.C. 1:6A-12.1, where the student would suffer irreparable harm if not permitted to return, he had a legal right to attend school and receive a FAPE, there was a substantial likelihood that the penalty against the student was excessive, given the student's uncertain role in the incident, the lack of intent to hurt anyone, and the five-day suspension to another student acting in an identical manner, and more harm would result to the student than the district if the relief was not granted. *T.G. ex rel. C.R. v. Mount Laurel Twp. Bd. of Educ.*, OAL DKT. NO. EDS 2878-06, 2006 N.J. AGEN LEXIS 437, Final Decision (May 19, 2006).

Emergent relief granted for one hour of social skills training per week as part of the interim home instruction being offered a 13-year-old student, whose parent had withdrawn him from an out-of-district placement due to alleged use of physical restraint; other issues necessitated a full hearing. *R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ.*, OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Requirements of N.J.A.C. 1:6A-12 must be read in the conjunctive and not the disjunctive; if a petitioner fails to meet the criteria of one of the four enumerated considerations, the request for emergency relief must be denied. *R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ.*, OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Parents who sought an emergency order terminating the use of a helmet on their six-year-old autistic son at school were denied relief where they failed to establish irreparable harm. *D.B. ex rel. C.B. v. Bernards Twp. Bd. of Educ.*, OAL Dkt. No. EDS 412-06, 2006 N.J. AGEN LEXIS 240, Final Decision on Emergency Relief (February 23, 2006).

Parents failed to satisfy all of the criteria of N.J.A.C. 1:6A-12.1(e) for the issuance of an emergency relief order in their bid for a "stay put" order that would maintain their child's status as an out-of-district tuition student at a high school where letters between the school and the parents did not amount to a contractual agreement giving rise to any obligation on the part of the high school to accept the student for any subsequent

year. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Child's need for immediate placement in private school warranted emergency relief. J.G. v. Franklin Township Board of Education, 97 N.J.A.R.2d (EDS) 13.

Child's grade placement was not issue subject to grant of emergency relief. T.R. v. Mt. Olive Board of Education, 96 N.J.A.R.2d (EDS) 125.

Emergency relief was inappropriate remedy for student denied access to educational program based on allegation of theft. T.S. v. Lenape Regional High School District Board of Education, 96 N.J.A.R.2d (EDS) 122.

Emergency relief request denied when change of classroom location was found not to constitute change of program. C.M. v. Elizabeth Board of Education, 96 N.J.A.R.2d (EDS) 75.

Emergency implementation of home schooling plan provided satisfactory interim education for mentally handicapped student during pendency of mediation process. M.F. v. Toms River Regional Board of Education, 96 N.J.A.R.2d (EDS) 67.

Emergency relief allowing classified student to participate in interscholastic sports denied when classified student making good academic progress without requested relief. N.W. v. Brick Township Board of Education, 96 N.J.A.R.2d (EDS) 36.

School board's request for emergency relief to implement special education services granted where reasonable probability of board prevailing on merits existed. Bergenfield Board of Education v. C.W., 96 N.J.A.R.2d (EDS) 19.

Emergency relief was not available to provide a sign-language interpreter to a hearing impaired student attending a private school while residing in district. M.S. v. Washington Township Board, 95 N.J.A.R.2d (EDS) 253.

Possible adjustment of computer program for multiply handicapped child's home use was more appropriately addressed by agency than by emergent relief. M.S. v. Mount Laurel Board, 95 N.J.A.R.2d (EDS) 220.

Adult classified special education student with disciplinary problems was precluded from attending Senior Prom. P.P. v. Westwood Board, 95 N.J.A.R.2d (EDS) 165.

Escalating misconduct warranted home instruction pending out-of-district placement for behavioral modification. West Windsor v. J.D., 95 N.J.A.R.2d (EDS) 146.

Home instruction pending out-of-district placement for disruptive emotionally disturbed student was necessary. Tinton Falls v. K.C., 95 N.J.A.R.2d (EDS) 96.

Harassment required removal from special education class and placement in comparable mainstream class. P.D. v. Hasbrouck Heights, 95 N.J.A.R.2d (EDS) 5.

Mother's request for emergency relief to allow her 18-year old son to attend senior graduation ceremonies denied. A.Y. v. Millville Board of Education, 94 N.J.A.R.2d (EDS) 132.

Denial of emergency relief; special education program provided by Board of Education was adequate. K.M.C. v. Clearview Regional Board of Education, 94 N.J.A.R.2d (EDS) 95.

Unresolved issue of domicile prevents grant of emergency petition for enrollment. R.R. v. Freehold Regional High School District, 94 N.J.A.R.2d (EDS) 38.

## SUBCHAPTER 13. PREHEARING CONFERENCES

### 1:6A-13.1 Prehearing conferences

Prehearing conferences may be scheduled in special education hearings.

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Substituted "may" for "shall not".

## SUBCHAPTER 14. CONDUCT OF CASES

### 1:6A-14.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) At the hearing, parents shall have the right to open the hearing to the public, and to have the child who is the subject of the hearing present.

(c) A verbatim record shall be made of the hearing.

(d) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

Amended by R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Deleted (c); redesignated (d)-(e) as (c)-(d).

### 1:6A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

1. At the request of a board of education or public agency if the board of education or public agency maintains that it is dangerous for the child to be in the current placement during the pendency of due process proceedings; or

2. At the request of a parent if:

i. The parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability; or

ii. The parent disagrees with an order of school personnel removing a pupil with a disability from the pupil's current placement for more than 10 days or a series of removals that constitute a change in placement pursuant to 34 CFR 300.519 for a violation of school rules.

(b) Upon receipt of a request for an expedited hearing that meets the requirements of (a) above, the representative of the Department of Education shall, through telephone conference call to the parties and to the Clerk:

1. Determine whether both parties request mediation;

2. If both parties request mediation, schedule the dates for the mediation and for the hearing; and

3. If mediation is not requested, schedule dates for the hearing.

(c) The hearing date for the expedited hearing shall be no later than 10 days from the date of the hearing request. If both parties cannot agree to a hearing date within 10 days of the hearing request, a date shall be assigned by the Clerk within the required timelines.

(d) In an expedited hearing:

1. Responses to requests for discovery pursuant to N.J.A.C. 1:6A-10.1 shall be completed no later than two business days before the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least two business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

2. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request. The time for issuance of an initial decision shall not be extended.

(e) In an expedited hearing pursuant to (a)1 and 2ii above, the judge may order placement of the pupil in an appropriate interim alternative educational setting if the judge:

1. Considers the appropriateness of the child's current placement;

2. Considers whether the board of education or public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

3. Determines that the board of education or public agency has demonstrated by substantial evidence, that is, beyond a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; and

4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher will enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and includes services and modifications to address the behavior and that are designed to prevent the behavior from recurring.

(f) In an expedited hearing pursuant to (a)2 above, the judge shall determine whether the board of education or public agency has demonstrated that the pupil's behavior was not a manifestation of the pupil's disability.

(g) Placement in an interim alternative placement may not be longer than 45 days. The procedures set forth in this section for such placement may be repeated as necessary.

New Rule, R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.2, Interpreters, recodified to N.J.A.C. 1:6A-14.3.

#### Case Notes

Board of education was not ordered to grant a high school diploma to student who suffered from irritable bowel syndrome where he had not received the required 130 credit hours for his senior year. By denying the request for a diploma prior to his completion of 130 credit hours, irreparable harm would not be caused to the student since the diploma would be granted to him upon the completion of four additional courses; the case law was clear that, without meeting the minimum credit requirements set forth by the board of education, the student had no right to a diploma; and the interest of the board in maintaining its minimum credit requirements was extremely significant for, without being able to enforce its minimum regulations for academic achievement, the board would be unable to effectively educate students. *B.M. ex rel. A.M. v. Jackson Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4717-08, 2008 N.J. AGEN LEXIS 489, Emergent Relief Final Decision (June 18, 2008).

#### 1:6A-14.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

Recodified from N.J.A.C. 1:6A-14.2 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.3, Independent educational evaluation, recodified to N.J.A.C. 1:6A-14.4.

#### 1:6A-14.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6A:14 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 C.F.R. 300.503)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

Recodified from N.J.A.C. 1:6A-14.3 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.4, Transcripts, recodified to N.J.A.C. 1:6A-14.5.

Amended by R.2005 d.261, effective August 15, 2005.  
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).  
In (a), substituted "6A:14" for "6:28-1".

#### 1:6A-14.5 Transcripts

(a) In addition to any stenographic recording, each hearing shall be sound recorded by tape recording. A parent may receive a copy of the tape recording at no cost by making a request to the Clerk.

(b) Transcripts of any hearing may be obtained pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs.

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Recodified from N.J.A.C. 1:6A-14.4 and amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (b).

### SUBCHAPTERS 15 THROUGH 17. (RESERVED)

### SUBCHAPTER 18. DECISION AND APPEAL

#### 1:6A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 1:6A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request.

Amended by R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Revised text.