

**CHAPTER 14
SPECIAL EDUCATION**

Authority

N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:39-1.1, 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., and U.S.P.L. 93-112, Sec. 504, 94-142, 99-457, 101-476, 105-17, and 108-446.

Source and Effective Date

R.2003 d.387, effective September 8, 2003.
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 14, Special Education, expires on March 7, 2009. See: 38 N.J.R. 2253(a).

Chapter Historical Note

Chapter 14, Special Education, was adopted as R.1998 d.334, effective July 6, 1998. See: 30 N.J.R. 1219(b), 30 N.J.R. 2435(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

Law Review and Journal Commentaries

Special Education: A Promise to Children with Disabilities. Viola S. Lordi, 193 N.J.L.J. 10 (1998).

6A:14-1.1 General requirements

(a) The rules in this chapter supersede all rules in effect prior to October 6, 2003 pertaining to students with disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.); and, in furtherance thereof, to:

i. Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an individualized education program is in effect for the student by that date;

ii. Ensure that a free, appropriate public education is available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade;

iii. Ensure that the services and placement needed by each student with a disability to receive a free, appropriate public education are based on the student's unique needs and not on the student's disability;

2. Ensure that students with disabilities are educated in the least restrictive environment;

3. Ensure the provision of special education and related services;

4. Ensure that the rights of students with disabilities and their parents are protected;

5. Assist public and private agencies providing educational services to students with disabilities; and

6. Ensure the evaluation of the effectiveness of the education of students with disabilities.

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to students with disabilities.

1. Programs and services shall be provided to students age three through 21.

2. Programs and services may be provided by a district board of education at its option to students below the age of three and above the age of 21.

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of children with disabilities below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent;

2. Be administered, supervised and provided by appropriately certified professional staff members;

3. Be located in facilities that are accessible to the disabled; and

4. Meet all requirements of this chapter.

(e) With the exception of students placed in nonpublic schools according to N.J.A.C. 6A:14-6.5, all students with disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(f) Each district board of education shall ensure that the hearing aids worn by children who are deaf and/or hard of hearing are functioning properly.

(g) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.

(h) All public and private agencies that provide educational programs and services to students with disabilities shall maintain documentation demonstrating compliance with this chapter.

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

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

In (b), added i through iii.

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

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

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

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

Law Review and Journal Commentaries

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

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

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

1. If a district board of education has on file with the Department of Education through the county office of education policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect

before June 4, 1997, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.

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

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

ii. If the provisions of the IDEA Amendments of 1997 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

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

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

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

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

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

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

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

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

8. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6:3-6;

9. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter exper-

ience a smooth transition and that by the student's third birthday an individualized education program has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);

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

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

12. All personnel serving students with disabilities are appropriately certified and licensed, where a license is required;

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

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

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

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

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;

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

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

14. Students with disabilities are included in Statewide and districtwide assessment programs, with appropriate accommodations, where necessary.

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

(d) Annually, each district board of education shall describe how it will use the funds under Part B of the IDEA during the next school year.

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

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

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

3. Any additional reports as required by the IDEA (20 U.S.C. §§ 1400 et seq.) including, but not limited to, the number of students with disabilities who are:

- i. Exiting education;
- ii. Subject to suspensions and expulsions;
- iii. Removed to interim alternative education settings; and
- iv. Participating in Statewide assessments.

(f) Upon request, reports in addition to those under (e) above shall be submitted to the Department of Education including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated and newly classified.

(g) The LEA shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the IDEA.

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.

Case Notes

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

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

6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms used in the IDEA.

“Adaptive behavior” means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

“Adult student” means a person who has attained age 18, who is not under legal guardianship and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

“Approved private school for the disabled” corresponds to “approved private school for the handicapped” and

means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

“Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

“Assistive technology service” means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a student with a disability or, if appropriate, that student’s family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers or other individuals who may provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

“Consent” means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;
2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
3. Understands that the granting of consent is voluntary and may be revoked at any time; and
4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

“Department of Education” means the New Jersey Department of Education.

“District board of education” means the school district of residence, the board of trustees of a charter school, the State agency or other public education agency which acts as the district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a free

appropriate, public education to students with disabilities except as defined otherwise.

“Early childhood program” means a regular education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by a governmental agency.

“Extended school year services” means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student’s IEP at no cost to the parent.

“General Statewide assessment” means a Statewide assessment given to all students of a particular grade level except for those students with disabilities whose IEP specifies that they will participate in the alternate proficiency assessment.

“Individualized education program” (IEP) means a written plan developed at a meeting according to N.J.A.C. 6A:14-2.3(i)2 which sets forth present levels of performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

“IEP team” means the group of individuals who are responsible for the development, review and revision of the student’s individualized educational program. The members of IEP team are listed at N.J.A.C. 6A:14-2.3(i)2.

“Native language” means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine the language of the student.

“Nonpublic school” means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades in which a student age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

“Nonpublic school student” means any student who is enrolled full time in a nonpublic school. A student who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent resides.

"Parent" means the natural or adoptive parent, the legal guardian, surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (d), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term "parent" shall include the adult student as defined above. In addition, a foster parent may act as a parent under this chapter if:

1. The parent's authority to make educational decisions on the student's behalf has been terminated by a court of appropriate jurisdiction;
2. The foster parent has an ongoing, long-term relationship with the student;
3. The foster parent is willing to make the educational decisions required of parents under this chapter; and
4. The foster parent has no interest that would conflict with the student.

"Referral" means the written request for an initial evaluation to determine whether a student is eligible for services under this chapter.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education as specified in the student's IEP, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school nursing services, social work services in schools and parent counseling and training. These terms are defined according to 34 C.F.R. § 300.24, incorporated herein by reference, as amended and supplemented. (See chapter Appendix B.)

"Special education" means specially designed instruction at no cost to the parents, to meet the unique needs of students with disabilities according to 34 C.F.R. § 300.26, incorporated herein by reference, as amended and supplemented. (See chapter Appendix C.)

"Speech-language specialist" means a speech correctionist or speech-language specialist.

"Student" means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Student age" means the school age of a student as defined by the following:

1. "Age three" means the attainment of the third birthday. Children with disabilities attaining age three shall have a free, appropriate public education available to them provided by the district board of education.

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cutoff date by the district board of education. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided pre-school services for the balance of that school year.

3. "Age 21" means the attainment of the 21st birthday by June 30 of that school year. Students with disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Student with a disability" means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

"Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

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".

Case Notes

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

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. 6:3-6), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(c) If the mediation according to N.J.A.C. 6A:14-2.6 or due process hearing according to N.J.A.C. 6A:14-2.7 involves initial admission to the public school, the child shall be placed in an interim public school program agreed to by the parent and the district board of education pending the outcome of the mediation or due process hearing.

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 student.

Case Notes

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

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

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

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

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

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

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

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

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

Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of study was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and

placement. *Milt v. East Windsor Regional School District*, 9 N.J.A.R. 159 (1986).

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

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

6A:14-2.2 Surrogate parents 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 either:

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; or
3. An agency of the State of New Jersey has guardianship of the student.

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

(c) The person serving as a surrogate parent shall have:

1. No interest that conflicts with those of the student he or she represents; and
2. Knowledge and skills that ensure adequate representation of the student.

(d) 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.

(e) When a student (who is or may be a student with a disability) is in the care of a foster parent, 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.

(f) 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.

(g) If the district board of education cannot ascertain the whereabouts of the parent, the district board of education

shall consult with the student's case manager at DYFS to assist in identifying an individual, including the foster parent, who may serve as a surrogate. The district board of education shall appoint a surrogate parent and obtain all required consent from and provide written notices to the surrogate parent.

(h) If the rights of the parent have been terminated, the district board of education shall consult with the student's case manager at DYFS to determine whether the foster parent meets the criteria established at N.J.A.C. 6A:14-1.3 in the definition of "parent" and can act on behalf of the student. If so, the district board of education shall obtain all required consent from and provide written notices to the foster parent.

1. If it is determined that the foster parent cannot serve as the parent on behalf of the student, the district board of education in consultation with DYFS shall 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".

Case Notes

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

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

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

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

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

(a) Consent shall be obtained:

1. Prior to conducting any assessment as part of an initial evaluation;
2. Prior to implementation of the initial IEP resulting from (a)1 above;

3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (i)7 below, to obtain such consent and the parent failed to respond; and

4. Prior to the release of student records according to N.J.A.C. 6:3-6.

(b) If a parent refuses to provide consent and the district and the parent have not agreed to other action, the district shall request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

(c) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.

(d) Written notice which meets the requirements of this section shall be provided to the parent when a district board of education:

1. Proposes to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student; or

2. Declines to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.

(e) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

1. A description of the action proposed or denied by the district board of education;

2. An explanation of why it is taking such action;

3. A description of any options the district board of education considered and the reasons why those options were rejected;

4. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action;

5. A description of any other factors that are relevant to the proposal or refusal by the district board of education;

6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and

7. In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents shall be provided:

- i. Upon referral for an initial evaluation;
- ii. Upon each notification of an IEP meeting;
- iii. Upon reevaluation; and
- iv. When a request for a due process hearing is submitted to the Department of Education.

(f) Written notice according to (e) above shall be provided to the parent as follows:

1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;

2. The district of board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;

3. The district board of education shall implement the proposed action after the opportunity for consideration in (f)2 above has expired unless:

i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or

ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (f)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)9 or 2.7(j).

4. The district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team determines that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:

i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (e) above. Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.

ii. During the pendency of mediation or due process related to the disciplinary action the student shall be returned to the last agreed upon placement, unless the parent and district agree otherwise, the district requests emergency relief or if the student has been placed in an interim alternative educational setting according to 20 U.S.C. § 1415(k)(1)(A)(ii) or § 1415(k)(2), the student shall remain in the interim

alternative educational setting according to 20 U.S.C. § 1415(k)(7).

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (e) above shall be provided to the parent within 20 calendar days, excluding school holidays but not summer vacation.

i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination made within 20 calendar days, excluding school holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.

(g) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (e) above, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14), and due process hearing rules (N.J.A.C. 1:6A).

(h) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student.

(i) Meetings to determine eligibility and develop an IEP may be combined as long as the requirements for notice of a meeting according to (e)7ii above and (i)3 through 5 below are met.

1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:

- i. The parent;
- ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;
- iii. The student, where appropriate;
- iv. At least one child study team member who participated in the evaluation;
- v. The case manager;
- vi. Other appropriate individuals at the discretion of the parent or school district; and
- vii. For an initial eligibility meeting, certified school personnel referring the student as potentially disabled, or the school principal or designee if they choose to participate.

2. Meetings of the IEP team shall include the following participants:

- i. The parent;
 - ii. At least one regular education teacher of the student, if the student is or may be participating in the regular education classroom;
 - (1) If the student has no regular education teacher, a regular education teacher who is knowledgeable about the district's programs shall participate;
 - (2) The regular education teacher as a member of the IEP team must to the extent appropriate, participate in the development, review, and revision of the student's IEP;
 - (3) The regular education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
 - (4) The regular education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;
 - iii. At least one special education teacher of the student or, where appropriate, at least one special education provider of the student;
 - (1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;
 - iv. At least one child study team member who can interpret the instructional implications of evaluation results;
 - v. The case manager;
 - vi. A representative of the responsible district who:
 - (1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - (2) Is knowledgeable about the general education curriculum;
 - (3) Is knowledgeable about the availability of resources of the district board of education; and
 - (4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;
 - vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
 - (1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;
 - viii. The student where appropriate; and
 - ix. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.
3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.
 4. Meetings shall be scheduled at a mutually agreed upon time and place.
 5. Notice of meetings shall indicate the purpose, time, location and participants.
 - i. The notice of an IEP meeting shall inform the parents of the provisions in (i)2vii and (i)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.
 - ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services needs, the notice of the IEP meeting shall indicate that:
 - (1) A purpose of the meeting will be the development of a statement of the transition services needs of the student; and
 - (2) The school district will invite the student;
 - iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:
 - (1) Indicate that a purpose of the meeting is the consideration of needed transition services for the student;
 - (2) Indicate that the school will invite the student; and
 - (3) Identify any other agency that will be invited to send a representative.
 6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment.
 7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including, but not limited to:
 - i. Detailed records of telephone calls made or attempted and the results of those calls;
 - ii. Copies of correspondence sent to the parents and any responses received; and

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

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting.

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

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

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

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

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

2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for release of records of an adult student shall be obtained from the adult student.

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

4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing.

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

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

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

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

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

Rewrote the section.

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-2.4 Native language

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

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

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

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

2. That the parent understands the content of the notice; and

3. There is written documentation that the requirements of (b)1 and 2 above have been met.

Case Notes

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

6A:14-2.5 Protection in evaluation procedures

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

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

i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and

ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;

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

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

(b) Each district board of education shall ensure:

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

i. Are selected and administered so as not to be racially or culturally discriminatory; and

ii. Are provided and administered in the student's native language or other mode of communication unless it is clearly not feasible to do so; and

iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:

i. Have been validated for the purpose(s) for which they are administered; and

ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;

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

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

5. Tests are selected, administered and interpreted so that when a student has sensory, manual or communication impairments, the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of at least two members of the child study team and where appropriate, other specialists. At least one evaluator shall be knowledgeable in the area of the suspected disability; and

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

(c) A parent may request an independent evaluation if there is disagreement with the evaluation provided by a district board of education.

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

i. Upon receipt of the parental request, the district board of education shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the district board of education shall take steps to ensure that the independent evaluation is provided without undue delay; or

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

2. Any independent evaluation purchased at public expense shall:

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

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

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

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

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

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

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

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

Case Notes

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

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

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

School board may deny parents' request for additional assessment or evaluation where numerous previous assessments provide sufficient basis for evaluating student. *Hamburg Board of Education v. A.H.*, 96 N.J.A.R.2d (EDS) 87.

Weaknesses shown did not constitute deficits requiring independent evaluation of student for classification as handicapped. *Freehold Regional v. R.G.*, 93 N.J.A.R.2d (EDS) 234.

Law Reviews and Journal Commentaries

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

6A:14-2.6 Mediation

(a) Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 years when there is a disagreement regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education. A request for mediation shall not be used to deny or delay the right to request a due process hearing.

(b) If either party is unwilling to participate in mediation, a request for a due process hearing under N.J.A.C. 6A:14-2.7 may be made directly to the Department of Education through the Office of Special Education Programs.

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

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

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

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

2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the issue(s) in dispute and the relief sought;

3. A mediation conference consistent with New Jersey law and rules shall be conducted within 10 calendar days after receipt of a written request. At the mediation conference, issues shall be identified and options for resolution shall be explored;

4. The role of the mediator is to:

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

ii. Chair the meeting;

iii. Assist the parties in reaching an agreement;

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

v. Adjourn the mediation at the request of the parties to obtain additional information or explore options; and

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

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

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made;

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

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

9. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7(m), or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented (see chapter Appendixes A and D); and

10. Signed agreements resulting from mediation conducted according to this section are binding on the parties. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement by writing to the State Director of the Office of Special Education Programs, Department of Education. Upon receipt of this request, the Office of Special Education Programs shall make a determination regarding the implementation of the agreement. If it is determined that the district has failed to implement the agreement or part of the agreement, the Office of Special Education Programs shall order the district to implement the agreement or part of the agreement, as appropriate.

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

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

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

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

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

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

Case Notes

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

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

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

Parent could recover attorney fees recoverable following resolution of her special education complaint even though parent was allegedly to blame for forcing mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J. 1994, 849 F.Supp. 312.

Parent was "prevailing party" in mediation and entitled to award of attorney fees. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Use of expert was not "necessary" and court would award only \$100 of witness' \$500 fee. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Claim that aide at residential facility was educationally necessary was not the same as issue decided in first hearing concerning validity of settlement agreement; res judicata did not bar educational necessity claim. *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.

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

Competition in track meets was not available to handicapped student without required certificate. *C.W. v. Southern Gloucester Board*, 95 N.J.A.R.2d (EDS) 155.

Residential school's requirement that one-to-one aide be provided handicapped student for student to remain in program did not entitle parents to reopen settlement agreement. *D.R. v. East Brunswick Board of Education*, 93 N.J.A.R.2d (EDS) 31.

Implementation ordered of Stipulation of Settlement providing for mainstreaming of emotionally handicapped student at public high school. *J.J. v. Atlantic City Board of Education*, 92 N.J.A.R.2d (EDS) 251.

6A:14-2.7 Due process hearings

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action according to 34 CFR §§ 300.520 through 300.528. See chapter Appendixes A and D. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services. For students above the age of 21 who are no longer receiving services, a dispute regarding the provision of programs and services shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6A:3.

(b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

(c) A request for a due process hearing shall be made in writing to the State Director of the Office of Special Education Programs. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought.

(d) When the Office of Special Education Programs receives a request for a due process hearing, the following shall occur without delay:

1. The Office of Special Education Programs shall acknowledge receipt of the request, provide information to the parent regarding free and low cost legal services and shall contact both parties to offer mediation. If the

parties do not agree to mediation, the request shall be transmitted directly to the Office of Administrative Law, according to (d)3 below. If the parties agree to mediation, a conference shall be scheduled and held within 10 calendar days.

- i. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. The matter shall be considered settled. The agreement shall be binding according to N.J.A.C. 6A:14-2.6(d)10.

- ii. If the parties cannot reach an agreement, the matter shall be transmitted to the Office of Administrative Law according to (d)3 below.

2. Upon receiving the acknowledgment from the Office of Special Education Programs, the parties shall complete the exchange of relevant records and information according to the time limits in N.J.A.C. 1:6A; and

3. A representative from the Office of Special Education Programs shall telephone the parties and the clerk of the Office of Administrative Law and schedule a hearing date. If a party is not available to schedule a hearing date, or the parties cannot agree to a hearing date, a date shall be assigned by the Office of Administrative Law within the required timelines.

(e) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the receipt of the request for the due process hearing by the Office of Special Education Programs unless a specific adjournment is granted by the administrative law judge in response to a request by either party to the dispute.

(f) The decision of the administrative law judge is final, binding on both parties and to be implemented without undue delay unless stayed according to N.J.A.C. 1:6A-18.4.

(g) If the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under 34 C.F.R. §§ 300.520 through 300.528, the parent may request an expedited hearing.

(h) To remove a student with a disability when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 days according to 34 C.F.R. § 300.521(a) through (e);

1. The procedure in 34 C.F.R. § 300.526(c) may be repeated as necessary.

(i) An expedited hearing shall be requested according to the following:

1. The request for a due process hearing shall specify that an expedited hearing is requested due to disciplinary action;

2. When a request for an expedited hearing is received, the Office of Special Education Programs shall acknowledge receipt of the request, shall provide information to the parent regarding free and low cost legal services, shall offer mediation to the parties and shall transmit the case to the Office of Administrative Law according to the following:

i. A representative from the Office of Special Education Programs shall schedule the mediation, if requested, and shall telephone the clerk of the Office of Administrative Law to schedule a hearing date. If the parties are not available to schedule a hearing date or the parties cannot agree to a hearing date, a date shall be assigned by the Office of Administrative Law within the required timelines;

ii. The expedited hearing shall be conducted within 10 calendar days of receipt of the request by the Office of Special Education Programs;

iii. The mediation shall be completed prior to the expedited hearing;

iv. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. The matter shall be considered settled. The agreement shall be binding according to N.J.A.C. 6A:14-2.6(d)10;

3. Upon receiving the acknowledgment of the request from the Office of Special Education Programs, the parties shall complete the exchange of relevant records and information at least two business days before the hearing; and

4. The expedited hearing shall result in a written decision being mailed to the parties within 45 days of the receipt of the request by the Office of Special Education Programs without exceptions or extensions.

(j) In reviewing a decision with respect to a manifestation determination, the administrative law judge shall determine whether the district board of education has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of 34 C.F.R. § 300.523(d).

(k) In reviewing a decision under 34 C.F.R. § 300.520(a)(2) to place the student in an interim alternative educational setting, the administrative law judge shall apply the standards in 34 C.F.R. § 300.521.

(l) Either party may apply in writing for emergency relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergency relief shall note that a copy was sent to the other party.

(m) Prior to transmittal of a request for a due process hearing or an expedited hearing to the Office of Administrative Law, an application for emergency relief shall be made to the State Director of the Office of Special Education Programs. After transmittal of a request for a due process hearing or an expedited hearing, any application for emergency relief shall be made directly to the Office of Administrative Law.

1. Emergency relief may be requested according to N.J.A.C. 1:6A-12.1. Emergency relief may be granted if the administrative law judge determines from the proofs that:

i. The petitioner will suffer irreparable harm if the requested relief is not granted;

ii. The legal right underlying the petitioner's claim is settled;

iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(n) If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education. Upon receipt of this request, the Office of Special Education Programs shall determine the implementation of the decision. If it is determined that the district has failed to implement the decision or part of the decision, the Office of Special Education Programs shall order the district to implement the decision or part of the decision, as appropriate.

(o) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented according to 34 C.F.R. § 300.526. (See chapter Appendixes A and D.)

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

(p) Any party may appeal the decision of an administrative law judge according to N.J.A.C. 1:6A-18.3.

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

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

Rewrote (d)3ii.

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

School district has burden of proving that proposed individualized education program is appropriate. *Lascari v. Board of Educ. of*

Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Law Reviews and Journal Commentaries

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

6A:14-2.8 Discipline/suspension/expulsions

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

1. The district board of education need not provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.

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

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

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

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

(c) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k), as amended and supplemented. (See chapter Appendixes A and D.)

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

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

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

(e) In the case of a removal for drug or weapons offenses under 34 C.F.R. § 300.520(a)(2), or a removal by an administrative law judge for dangerousness consistent with 34 C.F.R. § 300.521, the district board of education shall provide services to the student with a disability consistent with 34 C.F.R. § 300.522, incorporated herein by reference.

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

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

Rewrote the section.

Case Notes

State regulatory requirement that special education students removed from placement for disciplinary reasons for more than 10 cumulative or consecutive school days in a school year be provided services enabling them to "progress appropriately" in curriculum and "advance appropriately" toward individual goals did not violate students' right under the Individuals with Disabilities Education Act (IDEA) to free appropriate public education (FAPE); language at issue mirrored federal regulations, and appropriate progress and advancement amounted to "meaningful benefit" involving "significant learning," precisely the objective of a FAPE. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-2.9 Student records

(a) All student records shall be maintained according to N.J.A.C. 6:3-6.

(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. 6:3-6 without unnecessary delay and before any meeting regarding the IEP.

(c) Any consent required for students with disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6A:14-1.3 "consent" and 2.3(a) and (b).

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 the disabled.

(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 the disabled 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, 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(e) and (f) 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 may not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if:

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).

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.

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

SUBCHAPTER 3. SERVICES

Case Notes

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

6A:14-3.1 General requirements

(a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.

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

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

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

1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;
2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;
3. May deliver appropriate related services to students with disabilities;
4. May provide preventive and support services to nondisabled students; and
5. May provide services to the general education staff regarding techniques, materials and programs for students experiencing difficulties in learning. Services include, but are not limited to, the following:
 - i. Consultation with school staff and parents; and
 - ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

Case Notes

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

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

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

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

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

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

6A:14-3.2 Case manager

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

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

(c) The case manager shall:

1. Be knowledgeable about the student's educational needs and program;
2. Be knowledgeable about special education procedures and procedural safeguards;
3. Have an apportioned amount of time for case management responsibilities; and
4. Be responsible for transition planning.

6A:14-3.3 Location, referral and identification

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

1. The requirements of this section apply to highly mobile students with disabilities, such as migrant and homeless students, and to students who may be disabled even though they are advancing from grade to grade.
2. The activities undertaken to locate nonpublic school students with disabilities shall be comparable to activities undertaken to locate public school students with disabilities. In addition, each district board of education shall consult with appropriate representatives of nonpublic school students on how to carry out these activities.
3. The referral procedures shall provide for:
 - i. Interventions in the general education program according to N.J.A.C. 6A:16-7;
 - ii. Evaluation to determine eligibility for special education and related services; and/or

iii. Other educational action, as appropriate.

(b) The procedures shall provide for referral by instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of students.

(c) Interventions in the general education program to alleviate educational problems shall be provided to a student unless the student's educational problem(s) is such that direct referral to the child study team is required according to (d) below.

1. The staff of the general education program shall maintain written documentation of the implementation and effectiveness of the interventions.

2. When it is determined that interventions in the general education program have not adequately addressed the educational difficulties and it is believed that the student may be disabled, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

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

(d) Interventions in the regular education program are not a prerequisite to an evaluation for services under this chapter when:

1. It can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for services under this chapter is warranted without delay; or

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

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

1. To facilitate the transition from early intervention to preschool, a child study team member of the district board of education shall participate in the preschool

transition planning conference arranged by the Department of Health and Senior Services.

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

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

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

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

(f) When it is determined that an evaluation for eligibility for services under this chapter is warranted, the student shall be considered identified as potentially disabled. If the student is removed for disciplinary action, limitations on the amount of time the student is removed and the requirement to provide services shall be consistent with procedures in N.J.A.C. 6A:14-2.8. Additionally, in accordance with 20 U.S.C. § 1415(k)(8)(A) and (B), protections for children not yet eligible for special education and related services shall apply. (See chapter Appendix A.)

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

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

(i) The New Jersey Department of Education incorporates by reference the provisions at 34 C.F.R. § 300.125 regarding child find. (See chapter Appendix E.)

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

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

In (e), rewrote the introductory paragraph.
Amended by R.2000 d.230, effective June 5, 2000.

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

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

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

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

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

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

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

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

Case Notes

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

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

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

6A:14-3.4 Evaluation

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

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

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

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

ii. The present levels of 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; and

3. Determine which child study team members and/or specialists shall conduct the evaluation.

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

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

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

(d) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. Such evaluation shall include assessment by at least two members of the child study team and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. Include, where appropriate, or required, the use of a standardized test(s) which shall be:

- i. Individually administered;
- ii. Valid and reliable;
- iii. Normed on a representative population; and
- iv. Scored as either standard score with standard deviation or norm referenced scores with a cutoff score;

2. Include functional assessment of academic performance and, where appropriate, behavior. Each of the following components shall be completed by at least one evaluator:

i. A minimum of one structured observation by one evaluator in other than a testing session;

(1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the regular classroom;

(2) In the case of a student of preschool age, a child study team member in an environment appropriate for a child of that age;

ii. An interview with the student's parent;

iii. An interview with the teacher(s) referring the potentially disabled student;

iv. A review of the student's developmental/educational history including records and interviews;

v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and

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

3. Beginning at age 14, or younger if appropriate, include assessment(s) to determine appropriate post-secondary outcomes.

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

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

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

3. Conduct an assessment according to (d)1 and 2 above. The assessment shall include written information from the classroom teacher of the educational impact created by the speech problem. Such assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (d) above; and

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

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

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

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

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

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

- i. Whether the student has a specific learning disability;
- ii. The basis for making the determination;
- iii. The relevant behavior noted during the observation;
- iv. The relationship of that behavior to the student's academic performance;
- v. Educationally relevant medical findings, if any;
- vi. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
- vii. The determination concerning the effects of environmental, cultural or economic disadvantage; and

5. Additionally each team member shall certify in writing whether the report reflects his or her conclusions. If the report does not reflect his or her conclusions, the team member must submit a separate statement presenting his or her conclusions.

(g) The reports and assessments of child study team members or specialists from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions or professionals in private practice may be submitted to the IEP team for consideration. The IEP team may accept or reject the entire report(s) or any part of the report(s). Acceptance of the report shall be noted in writing and shall become part of the report(s) of the district. If a report or part of a report is rejected, a written rationale shall be provided to the parent by the IEP team.

(h) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall transmit the summary to the child study team for the meeting according to N.J.A.C. 6A:14-3.4(a)1 to consider the need for a health appraisal or specialized medical evaluation.

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

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

Added (i).

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

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

Rewrote the section.

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

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

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

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

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

In (e), Amended the NJAC reference.

Case Notes

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

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

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

Psychiatric evaluation granted due to student's distorted behavior. *Hillside Board of Education v. B.L.*, 97 N.J.A.R.2d (EDS) 128.

Assaultive student ordered to undergo evaluation even if parent refuses to give consent. *Bloomfield Board of Education v. R.G.*, 97 N.J.A.R.2d (EDS) 121.

Denial of special education evaluation denied. *K.S. v. Parsippany-Troy Hills Board of Education*, 97 N.J.A.R.2d (EDS) 60.

Minor child's violence in school warranted evaluation. *Roselle Board of Education v. M.W.*, 97 N.J.A.R.2d (EDS) 38.

High school student's poor performance and possession of knife in school warranted evaluation. *Sterling Board of Education v. M.C.*, 97 N.J.A.R.2d (EDS) 37.

Student's poor progress warranted evaluation despite parents' opposition. *East Brunswick Board of Education v. A.M.*, 97 N.J.A.R.2d (EDS) 14.

Student's poor performance warranted evaluation of student's eligibility for special education. *Weehawken Board of Education v. E.C.*, 97 N.J.A.R.2d (EDS) 2.

Nonconsensual special education evaluation was appropriate where first grade student had difficulty finishing tasks and had engaged in inappropriate behavior since entering kindergarten. *Wayne Township v. T.F. and M.F.*, 96 N.J.A.R.2d (EDS) 336.

Student's failing grades, trancies, and disciplinary suspensions supported special education evaluation. *C.B. v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDS) 333.

Noncustodial parent lacked authority to consent to special education evaluation. *K.W. v. Sparta Board of Education*, 96 N.J.A.R.2d (EDS) 286.

Initial comprehensive special education evaluation of high school student suffering from anorexia nervosa was appropriate where student would otherwise be too old to register for high school courses. *J.C. v. Elmwood Park Board of Education*, 96 N.J.A.R.2d (EDS) 208.

Child study team evaluation of student failing all classes and exhibiting behavioral problems was ordered despite lack of parental consent. *Freehold Regional Board of Education v. M.DeL.*, 96 N.J.A.R.2d (EDS) 191.

Evaluation of student as perceptually impaired with Attention Deficit Disorder was appropriate. *Millville Board of Education v. J.J.*, 96 N.J.A.R.2d (EDS) 182.

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

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

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

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

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

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

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

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

Evaluation was required of student over parents' refusal upon arrest for possession of weapon. State Operated School v. H.J., 95 N.J.A.R.2d (EDS) 84.

Child's emotional and cognitive difficulties required evaluation over parents' refusal. Ewing Township v. G.R., 95 N.J.A.R.2d (EDS) 75.

Parents' costs for untimely assessment of neurologically impaired child were reimbursable. A.S. v. Teaneck Board, 95 N.J.A.R.2d (EDS) 45.

Mother's cooperation in evaluation of child for placement in special education class was required. School District v. M.B., 95 N.J.A.R.2d (EDS) 8.

Referral to child study team for evaluation as to placement in special education class was necessary for student with learning disability. Board of Education v. T.W., 95 N.J.A.R.2d (EDS) 6.

Student with drug problem not permitted to matriculate; Child Study Team given opportunity to conduct evaluation. P.F. v. North Hunterdon Board of Education, 94 N.J.A.R.2d (EDS) 213.

School Board's implementation of Independent Education Program for child classified as mildly retarded was proper. Caldwell-West Caldwell Board of Education v. M. B. 94 N.J.A.R.2d (EDS) 93.

Placement of neurologically impaired 6th-grader back in all special education 5th-grade classes was unnecessary. A.B. v. Westfield Board of Education, 94 N.J.A.R.2d (EDS) 85.

Classification of child as multiply handicapped and placement of child in a special education program. Orange Board of Education v. M.W., 94 N.J.A.R.2d (EDS) 18.

Child's poor school record and mother's failure to cooperate required evaluation without parental consent. Caldwell-West Caldwell v. M.B., 93 N.J.A.R.2d (EDS) 230.

Disruptive and threatening behavior justified referral of student with suspect disability for evaluation. State-Operated School District v. D.A., 93 N.J.A.R.2d (EDS) 151.

Student's continued poor progress required evaluation for handicap. Marlboro v. A.P., 93 N.J.A.R.2d (EDS) 149.

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.

Immediate evaluation of ten-year-old student ordered; student displayed educational deficiencies, poor behaviors and increased distractibility; complete absence of parental cooperation. East Brunswick Board of Education v. K.P., 93 N.J.A.R.2d (EDS) 77.

Child study team evaluation ordered for illiterate former street urchin. Middletown Township Board of Education v. H.L., 93 N.J.A.R.2d (EDS) 19.

Evaluation by child study team warranted for 10-year-old student exhibiting aggressive behavior. Somerville Board of Education v. L.M., 92 N.J.A.R.2d (EDS) 255.

Eighth-grade student referred to child study team for evaluation and possible classification. East Brunswick Board of Education v. K.L., 92 N.J.A.R.2d (EDS) 248.

Board authorized to evaluate student for purposes of determining special education needs; no parental cooperation. North Brunswick Board of Education v. S.S., 92 N.J.A.R.2d (EDS) 155.

Necessity of determining whether inappropriate classroom behavior was result of handicapped condition warranted completion of Child Study Team evaluation; parental opposition. Lodi Board of Education v. N.W., 92 N.J.A.R.2d (EDS) 108.

Record warranted order requiring evaluations of brother-and-sister twins. North Bergen Board of Education v. N.M. and A.M., 92 N.J.A.R.2d (EDS) 107.

Child Study Team evaluation was appropriate; absence of parental cooperation. Elizabeth Board of Education v. S.S., 92 N.J.A.R.2d (EDS) 103.

Student's inappropriate classroom behavior warranted Child Study Team evaluation to determine whether such behavior was result of handicapped condition. Lodi Board of Education v. N.W., 92 N.J.A.R.2d (EDS) 101.

Necessity for child study team evaluation demonstrated; absence of parental cooperation. Board of Education of Township of Bedminster v. J.T., 92 N.J.A.R.2d (EDS) 7.

Classification issues explained. R.D.H. v. Bd. of Ed., Flemington-Raritan Regional School District, Hunterdon Cty., 1975 S.L.D. 103, 1975 S.L.D. 111, 1976 S.L.D. 1161.

Classification and psychiatric evaluation. D.I. v. Neumann, 1974 S.L.D. 1006.

6A:14-3.5 Determination of eligibility for special education and related services

(a) When an initial evaluation is completed for a student age three through 21, a meeting according to N.J.A.C. 6A:14-2.3(i)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation and information that will be used for a determination of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described in N.J.A.C. 6A:14-2.3(i)1.

(b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of

instruction in reading or math or due to limited English proficiency.

(c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 13 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.

1. "Auditorily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditorily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

i. "Deafness"—The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.

ii. "Hearing impairment"—An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.

2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

3. "Cognitively impaired" corresponds to "mentally retarded" and means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

i. "Mild cognitive impairment" corresponds to "educable" and means a level of cognitive development and adaptive behavior in home, school and community settings that are mildly below age expectations with respect to all of the following:

- (1) The quality and rate of learning;
- (2) The use of symbols for the interpretation of information and the solution of problems; and
- (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate cognitive impairment" corresponds to "trainable" and means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

- (1) The ability to use symbols in the solution of problems of low complexity;
- (2) The ability to function socially without direct and close supervision in home, school and community settings; and
- (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe cognitive impairment" corresponds to "eligible for day training" and means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized oral language tests, where such tests are appropriate. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.

i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.

ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(e) and if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).

5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

i. An inability to learn that cannot be explained by intellectual, sensory or health factors;

ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

iii. Inappropriate types of behaviors or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiply disabled" corresponds to "multiply handicapped" and means the presence of two or more disabling conditions. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." "Multiply disabled" is characterized as follows:

i. "Multiple disabilities" means concomitant impairments, the combination of which causes such severe educational problems that programs designed for the separate disabling conditions will not meet the student's educational needs.

ii. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

7. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.

8. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

9. "Preschool disabled" corresponds to preschool handicapped and means an identified disabling condition and/or a measurable developmental impairment which occurs in children between the ages of three and five years and requires special education and related services.

10. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.

11. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

i. It is characterized by a severe discrepancy between the student's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematical computation;

(6) Mathematical reasoning; and

(7) Written expression.

ii. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.

iii. The district shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

12. "Traumatic brain injury" corresponds to "neurologically impaired" and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

13. "Visually impaired" corresponds to "visually handicapped" and means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

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

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

In (c)8, inserted "that may be" following "disability" in the first sentence.

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

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

In (a), deleted a reference to adult students; in (c)2, added a fifth sentence; in (c)4, substituted references to assessment for references to evaluation; and rewrote (c)8 and the introductory paragraph of (c)11.

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

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

In (a), inserted "and information that will be used for a determination" following "documentation", and added "not less than 10 calendar days prior to the meeting" following "parent".

Case Notes

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences or the influence of a foreign language, which adversely affects a student's educational performance; and/or
2. A language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c)4 and the student requires speech-language services only.

(b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(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.

(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 may serve as the agency representative at the IEP meeting.

(e) When a student has been determined eligible for speech-language services and other disabilities are suspected

or other services are being considered, the student shall be referred to the child study team.

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

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

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

Case Notes

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

6A:14-3.7 Individualized education program

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

1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;
2. The student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP; and
4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(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 and, as appropriate, the student's performance on any general State or district-wide assessment;

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.

i. The district board of education shall ensure that assistive technology devices or assistive technology services, or both, as defined in N.J.A.C. 6A:14-1.3, are made available to a student with a disability if required as part of the student's special education, related services or supplementary aids and services.

ii. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team determines that the student needs access to those devices in order to receive a free, appropriate public education; and

9. Beginning at age 14, or younger if determined appropriate by the IEP team, consider the need for technical consultation from the Division of Vocational Rehabilitation Services, Department of Labor and other agencies providing transition services.

(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 general 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 according to N.J.A.C. 6A:14-4.11 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. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from or there is a modification to local and State high school graduation requirements, the statement shall include:

i. A rationale for the exemption or modification 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, or younger if determined appropriate by the IEP team, 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 and other agencies providing transition services;

10. Beginning at age 16, or younger if deemed appropriate by the IEP team, 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. 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 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;

12. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;

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

14. 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, 13 and 14 above. When appropriate, (d)9, 10, 11 and 12 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 disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.

2. The annual review of the IEP for an elementary school student with 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 meeting to develop 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.
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.2003 d.387, effective October 6, 2003.
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (d)5i, inserted "general" following "particular" and amended NJAC reference.

Case Notes

Participation by representatives of both school districts in which disabled child of divorced parents with joint custody resided, in developing and reviewing individualized educational plan (IEP), would not be inconsistent with Individuals With Disabilities Education Act (IDEA) nor New Jersey Administrative Code provision for IEP team to develop and periodically review child's IEP, where (IDEA) required team that developed and reviewed IEP to be "individualized" and to include child's parents, at least one of the child's teachers, and a representative of the local school district, and allowed participation of other individuals who had knowledge or special expertise regarding child. *Sommerville Bd. of Educ. v. Manville*, 167 N.J. 55 (2001).

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 by 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 by 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 by 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).

Parent's lack of consent no bar to implementing properly produced education plan for special education student. *Riverton Board of Education v. A.L.*, 97 N.J.A.R.2d (EDS) 130.

Delay seeking relief from poor grades defeats emergency petition. *J.T. v. Holmdel Board of Education*, 97 N.J.A.R.2d (EDS) 129.

Student granted compensatory education after inappropriate special education placement. *T.B. v. Camden Vocational Technical High School and Lower Camden County Regional High School District Number 1*, 97 N.J.A.R.2d (EDS) 104.

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 by 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 by 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 by 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 by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

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

State special education regulations governing consultation for transition services with the state Division of Vocational Rehabilitation Services (DVRS) and unspecified "other agencies" were sufficiently broad to encompass consultation with state Division of Developmental Disabilities (DDD) and Department of Human Services, Commission for the Blind and Visually Impaired (CBVI), as Individuals with Disabilities Education Act (IDEA) did not require specific reference to agencies serving the blind or those so severely developmentally disabled as to be unemployable. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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 physically therapy during summer months. *West Milford v. C.F.*, 95 N.J.A.R.2d (EDS) 204.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. 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) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:

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

i. Evaluations and information provided by the parents;

ii. Current classroom based assessments and observations; and

iii. Observations by teachers and related services providers; and

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

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

ii. The present levels of 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.

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

i. Shall provide notice according to N.J.A.C. 6A:14-2.3(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;

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

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

(d) Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(d)1 through 3 or 3.4(e), as appropriate.

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

(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.

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.

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

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

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

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

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

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

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. Hadonfield 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. Runnemedede Board of Education*, 95 N.J.A.R.2d (EDS) 257.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. *B.C. v. Flemington-Raritan Board*, 95 N.J.A.R.2d (EDS) 255.

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

Nosebleeds did not pose serious enough problem to warrant emergent relief in form of home instruction. *Mount Laurel Board v. C.S.*, 95 N.J.A.R.2d (EDS) 110.

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

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

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

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

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

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

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

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

6A:14-3.9 Related services

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

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

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

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

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

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

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

5. A district board of education or approved private school for the disabled may contract for the provision of speech-language services, counseling services, occupation-

al therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.

6. Recreation shall be provided by certified school personnel.

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

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

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

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

SUBCHAPTER 4. PROGRAMS AND INSTRUCTION

6A:14-4.1 General requirements

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

(b) A district board of education proposal to establish, 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, including preschoolers 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, with the following exception:

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

(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 immediately 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.

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 with the opportunity to observe the proposed educational placement prior to implementation of the IEP.

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

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

In (c), inserted a reference to preschoolers with disabilities; in (d), inserted "with the following exception" in introductory paragraph and added 1; in (g)2, added "immediately"; in (k), deleted a reference to adult student.

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).

Student entitled to same-sex aide for personal care during overnight camping trip. M.W. v. Shamong Township Board of Education, 97 N.J.A.R.2d (EDS) 102.

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) 6.

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).

6A:14-4.2 Placement in the least restrictive environment

(a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:

1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
2. Special classes, separate schooling or other removal of a student with a disability from the student's regular class occurs only when the nature or severity of the educational disability is such that education in the student's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.
3. A full continuum of alternative placements according to N.J.A.C. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;
4. Placement of a student with a disability is determined at least annually;
5. Placement is based on his or her individualized education program;
6. Placement is provided in appropriate educational settings as close to home as possible;
7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not disabled; and
8. Consideration is given to:
 - i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
 - ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
 - iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class.

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

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

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

Case Notes

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

Failure to meet burden of proving by preponderance of the evidence that child could not be educated in regular classroom. *Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

There is presumption in favor of placing child, in neighborhood school. *Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

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

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

Violation of Individuals With Disabilities Education Act; failure to provide adequate supplementary aids and services to kindergarten student. *Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

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

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

Placement in segregated, self-contained special education class was flawed Individualized Education Program. *Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

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

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

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

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

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

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

Request for residential placement properly denied when disabled student's placement at day school conferred educational benefits in

least restrictive environment. *P.G. v. Linwood Board of Education*, 96 N.J.A.R.2d (EDS) 99.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6A:14-4.3 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of students with disabilities ages three through 21 for special education and related services. Educational program options include placement in the following:

1. Regular class with supplementary aids and services including, but not limited to, the following:
 - i. Curricular or instructional modifications or specialized instructional strategies;
 - ii. Supplementary instruction;
 - iii. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
 - iv. Teacher aides; and
 - v. Related services.
2. Resource programs;
3. A special class program in the student's local school district;
4. A special education program in another local school district;
5. A special education program in a vocational and technical school;
6. A special education program in the following settings:
 - i. A county special services school district;
 - ii. An educational services commission; and
 - iii. A jointure commission.
7. A New Jersey approved private school for the disabled or an out-of-State school for the disabled in the continental United States approved by the department of education in the state where the school is located;
8. A program operated by a department of New Jersey State government;
9. Community rehabilitation programs;
10. Programs in hospitals, convalescent centers or other medical institutions;
11. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office;
12. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;
13. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and

14. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been enrolled for the balance of the school year in which the child turns age three.

(b) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.

1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.

(c) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a board of education according to the following:

1. Such early childhood program shall be licensed or approved by a governmental agency;
2. The district board of education shall assure that the program is nonsectarian;
3. The district board of education shall assure the student's IEP can be implemented in the early childhood program with any supplementary aids and services that are specified in the student's IEP; and
4. The special education and related services specified in the student's IEP shall be provided by appropriately certified and/or licensed personnel or by paraprofessionals according to N.J.A.C. 6A:14-3.9(a)4 or 4.1(e).

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

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

Added (b)1.

Case Notes

School board could not consider as least restrictive environment a private preschool program in which preschool handicapped child could receive supplementary services since it was not accredited by the state. *T.R. v. Kingwood Township Board of Education*, 32 F.Supp.2d 720 (D.N.J. 1998).

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).

Former N.J.A.C. 6:28-4.3 upheld. *D.S. v. Bd. of Ed., East Brunswick Twp.*, 188 N.J.Super. 592, 458 A.2d 129 (App.Div.1983), certification denied 94 N.J. 529, 468 A.2d 184 (1983).

Jurisdiction of Juvenile and Domestic Relations Court to place a pupil in an appropriate educational program. *State in Interest of F.M.*, 167 N.J.Super. 185, 400 A.2d 576 (J.D.R.Ct.1979).

School Board granted permission to place student in P.I. program. *Jersey City v. A.C.*, 97 N.J.A.R.2d (EDS) 55.

No emergency out-of-state placement for special education student if petition fails to meet standard for emergency relief. *A.C. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 21.

Autistic preschooler was not ready to be mainstreamed for nonacademic courses. *C.L. v. State Operated School District*, 96 N.J.A.R.2d (EDS) 331.

Special education student was entitled to remain at out-of-state extended year program he had attended previous year, even though program lacked state approval. *G.B. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 284.

Emergency relief request for summer school for disabled preschooler was denied on grounds that it merely represented extension of ten-month school year. *N.R. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 270.

Emergency relief request for summer in-home tutor was denied absent evidence of probable regression or lack of appropriate education. *C.N. v. Kingwood Township Board of Education*, 96 N.J.A.R.2d (EDS) 259.

Request for summer instruction was granted for classified student whose test scores showed regression. *S.M. v. Ocean Gate Board of Education*, 96 N.J.A.R.2d (EDS) 207.

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.

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

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.

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.

Structured, self-contained environment was more appropriate for student with psychiatric problems and truancy. *M.M. v. Dumont Board*, 95 N.J.A.R.2d (EDS) 50.

Trainable mentally retarded student was more appropriately placed in vocational as opposed to regular school. *B.M. v. Vineland Board*, 95 N.J.A.R.2d (EDS) 43.

Residential placement of handicapped student not necessary. *J.M. v. Morris Board of Education*, 95 N.J.A.R.2d (EDS) 10.

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.

Seeking to send their students to a district outside the state was not arbitrary, capricious or unreasonable. *Campbell v. Montague Township Board of Education*, 94 N.J.A.R.2d (EDU) 443.

Autistic child was ordered to continue in his in-home educational program. *M.A. v. Voorhees Board of Education*, 94 N.J.A.R.2d (EDS) 133.

Placement of Down's Syndrome child in private school was inappropriate. *C.S. v. Middletown Board of Education*, 94 N.J.A.R.2d (EDS) 97.

Disabled child was not entitled to reimbursement for private school placement. *M.K. v. Caldwell-West Caldwell Board of Education*, 94 N.J.A.R.2d (EDS) 55.

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.

Placement in 24-hour residential program was required for 19-year-old multiply handicapped student. *J.S. v. High Point*, 93 N.J.A.R.2d (EDS) 192.

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

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.

Appropriate education was provided in mainstreamed school, thus precluding placement of deaf student in segregated school. *S.M. v. Bergenfield*, 93 N.J.A.R.2d (EDS) 115.

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

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.

In-district placement of 15-year-old neurologically impaired student was appropriate; no reimbursement for unilateral placement out-of-district. *T.G. v. Middletown Township Board of Education*, 93 N.J.A.R.2d (EDS) 66.

Appropriate placement for neurologically impaired seven-year-old student was at in-district school even if not placement preferred by parents. *A.E. v. Caldwell-West Caldwell Board of Education*, 93 N.J.A.R.2d (EDS) 62.

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.

Appropriate placement for three-year-old child having developmental disorder was in local school district program. *W.B. v. Metuchen Board of Education*, 93 N.J.A.R.2d (EDS) 35.

Placement in out-of-district facility offering behavioral modification, rather than readmission to public school, was appropriate for suspended high school student. *V.D. v. North Hunterdon Board of Education*, 93 N.J.A.R.2d (EDS) 21.

Day placement was appropriate for 19-year-old multiply handicapped student with obsessive compulsive disorder. *T.W. v. Monroe Township Board of Education*, 93 N.J.A.R.2d (EDS) 14.

Neurologically impaired self-contained class, with appropriate mainstreaming, at public high school was appropriate and least restrictive placement for student. *J.F. v. Riverdale Regional High School*, 93 N.J.A.R.2d (EDS) 7.

Residential placement of 16-year-old multiply handicapped student at group-home facility not educationally necessary. *M.L. v. Summit Board of Education*, 92 N.J.A.R.2d (EDS) 239.

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.

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.

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.

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.

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

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.

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.

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.

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.

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

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

Unilateral decision to place the child in a private school; no tuition reimbursement. *C.R. v. Delaware Valley Regional School District*, 92 N.J.A.R.2d (EDS) 31.

Private school, and not proposed public school placements, provided appropriate education in least restrictive environment for severely mentally retarded student classified as educable mentally retarded. *Jo.M. and S.M. on Behalf of Their Daughter, J.M. v. Monmouth Regional Board of Education*, 92 N.J.A.R.2d (EDS) 9.

Although petitioners sought private school placement for their seven year old, classified as emotionally disturbed, the OAL judge determined that a self-contained, age appropriate, emotionally disturbed placement in respondent's school system was the appropriate placement for the child. *B.P. and E.P. Parents of J.P. v. City of Newark Bd. of Educ.*, 9 N.J.A.R. 190 (1986).

Petitioners' action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for their 13 year old son, classified as neurologically impaired, denied; finding that local board had attempted to provide a free appropriate education, with personalized instruction and sufficient support services to allow the child to benefit educationally. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

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).

Parents not entitled to reimbursement for private school tuition following unilateral withdrawal of pupil from special education program. *Robinson v. Goodwin*, 1975 S.L.D. 6.

6A:14-4.4 Program criteria: speech-language services

(a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:

1. Speech-language services shall be given individually or in groups.
 - i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.
2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

6A:14-4.5 Program criteria: supplementary instruction

(a) Supplementary instruction shall be provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.

(b) A teacher providing supplementary instruction shall be appropriately certified either for the subject or level in which instruction is given or as a teacher of the handicapped according to the requirements of N.J.A.C. 6:11.

(b) A teacher providing supplementary instruction shall be appropriately certified either for the subject or level in which instruction is given or as a teacher of the handicapped according to the requirements of N.J.A.C. 6:11.

(c) Supplementary instruction shall be provided individually or in groups according to the numbers for support resource programs.

(d) Supplementary instruction and replacement resource program shall not be provided by the same teacher during the same instructional period.

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

Case Notes

Replacement instruction more appropriate than in-class support for dyslexic student. *S.D. v. Washington Township (Gloucester County) Board of Education*, 96 N.J.A.R.2d (EDS) 377.

Reimbursement of parent for costs of private tutoring for neurologically impaired child denied. *N.B. West Orange Board of Education*, 94 N.J.A.R.2d (EDS) 86.

Reimbursement of past contributions toward costs of residential placement of autistic child and set-aside of lien filed against property for additional unpaid amounts was not appropriate. *S.P. v. Division of Youth and Family Services*, 94 N.J.A.R.2d (DYF) 5.

School district was not liable for tutoring expenses for special education student. *L.M. v. Cranbury Board of Education*, 94 N.J.A.R.2d (EDS) 4.

Third-grade student would be classified as perceptually impaired, and Individualized Education Program retaining her in regular classes with two hours of resource room would be implemented. *North Brunswick Board of Education v. S.S.*, 93 N.J.A.R.2d (EDS) 27.

6A:14-4.6 Program criteria: resource programs

(a) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a regular class or in a pull-out resource program according to N.J.A.C. 6A:26-6. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide support instruction or replacement instruction as defined in (e) and (f) below.

(b) The resource program teacher shall hold certification as a teacher of the handicapped. If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified as a teacher of deaf and/or hard of hearing.

(c) A resource program teacher shall be provided time for consultation with appropriate general education teaching staff.

(d) An in-class resource program may be provided up to the student's entire instructional day. At the elementary level, a pull-out resource program may be provided for up to one half of the instructional day. At the secondary level, a pull-out resource program may be provided for up to the entire instructional day.

(e) In a support resource program, the student shall meet the regular education curriculum requirements for the grade or subject being taught. Modifications to the instructional strategies or testing procedures may be provided and, if provided, shall be provided in accordance with the student's IEP. The primary instructional responsibility for the student in a support resource program shall be the regular classroom teacher with input from the resource program teacher as specified in the student's IEP. A support resource program provided in the student's regular class shall be at the same time and in the same activities as the rest of the class.

(f) In a replacement resource program, the regular education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the regular classroom teacher as appropriate. In an in-class replacement resource program, only a single content area shall be taught to the group. A student receiving an in-class replacement program shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.

(g) The age span in an approved separate resource program shall not exceed four years.

(h) Group sizes for resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

Support	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide Required
In-class ¹	6	—	9	—
Pull-out				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9
Replacement				
In-class ²	3	—	3	—
Pull-out				
Single subject	6	7 to 9	9	10 to 12
Multiple subject ³	4	—	4	—

¹Group size for in-class support instruction shall not be increased, except according to N.J.A.C. 6A:14-4.10.
²Group size for in-class replacement instruction shall not be increased, except according to N.J.A.C. 6A:14-4.10.
³Group size for multiple subject pull-out replacement instruction shall not be increased except according to N.J.A.C. 6A:14-4.10.

(i) In-class support and in-class replacement instruction may be provided only at the preschool or elementary level to students with disabilities by the same teacher during the same instructional period. Group size for this combined in-class resource program shall not exceed three students with disabilities.

(j) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher.

(k) Secondary resource programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.

(l) The district board of education may establish a team teaching model as an in-class resource program at the preschool or elementary level according to the following:

1. A regular education teacher and a special education teacher shall be assigned to the class full-time;
2. The total number of students with disabilities enrolled in the class who are receiving in-class resource instruction shall be limited to eight; and
3. The district board of education shall submit a description of the program to the Department of Education through the county office of education according to N.J.A.C. 6A:14-4.1(b).

Amended by R.1998 d.527, effective November 2, 1998.
 See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).
 In (i), inserted "only at the preschool or elementary school level" following "provided", and substituted "three students with disabilities" for "five students with disabilities for the preschool, elementary or secondary level" at the end; and added (k).
 Amended by R.2000 d.230, effective June 5, 2000.
 See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).
 Amended (f); added new (j); and recodified former (j) and (k) as (k) and (l).
 Amended by R.2003 d.387, effective October 6, 2003.
 See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).
 In (a), amended NJAC reference.

6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation

(a) A special class program shall serve students who have similar educational needs in accordance with their individualized education programs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies an alternative curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:

1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of the deaf or hard of hearing;
2. The age span in special class programs shall not exceed four years; and
3. A special class program shall not be approved as a kindergarten.

(b) The special class programs listed below are organized to provide environments where the nature of the student's impairment is the primary focus. The district board of education shall develop a description of each special class program it provides. Special class programs for students with auditory impairments shall be instructed by a certified teacher of the deaf/hard of hearing.

1. The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe cognitive disabilities or severe to profound cognitive disabilities.

2. Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.

3. Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as follows:

<u>I</u> Program	<u>II</u> Instructional Size: No Classroom Aide Required	<u>III</u> Instructional Size: Classroom Aide Required
Auditory impairments	8	9 to 12
Autism ¹	3	4 to 6 7 to 9 (Secondary only; Two aides required)
Behavioral disabilities	9	10 to 12
Cognitive ²		
Mild	12	13 to 16
Moderate	10	11 to 13
Severe	3	4 to 6 7 to 9 (Two aides required)
Learning and/or language disabilities		
Mild to moderate	10	11 to 16
Severe	8	9 to 12
Multiple disabilities	8	9 to 12
Preschool disabilities ³	—	1 to 8 9 to 12 (Two aides required)
Visual impairments	8	9 to 12

¹A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.

²A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.

³A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.

(c) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.

(d) In addition to the requirements for instructional size for special class programs according to (b)3 above, instruction may be provided in the following secondary settings as appropriate:

1. A class organized around a single content area consisting solely of students with disabilities instructed by a regular education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.

2. The number of students with disabilities in a regular education class instructed by a subject area teacher

shall be limited to four, if significant program modification is required. The IEP shall specify the program modifications including the supplementary aids and services to ensure access to the general education curriculum.

(e) Vocational education programs shall meet the following criteria:

1. For the student placed in a vocational program outside of the local district, responsibility shall be as follows:

i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;

ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the IEP decisions; and

2. In vocational shop and related academic programs, class sizes shall be as follows:

i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted according to N.J.A.C. 6A:14-4.10. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:

- (1) The nature and degree of the student's educationally disabling condition;
- (2) The interests, aptitudes and abilities of the student;
- (3) The functional level of the student;
- (4) The employment potential of the student;
- (5) The type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

(f) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor, Division of Vocational Rehabilitation Services, the New Jersey Department of Human Services, Commission for the Blind and Visually Impaired and the Department of Human Services, Division of Developmental Disabilities, to provide

vocational evaluation, work adjustment training, job coaching, skill training, supported employment and time-limited job coaching;

2. Placement shall be made according to the student's IEP. The IEP shall specify the core curriculum content standards to be met and shall address how the instruction will be provided; and

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

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

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

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

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

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

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

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

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

In (f), rewrote 1.

Case Notes

State special education regulations governing placement of secondary-level students in community rehabilitation programs for vocational rehabilitation services, permitting students to be placed in programs approved by the state Division of Vocational Services (DVRS), were insufficiently broad to encompass placement in programs approved by agencies serving the blind or those so severely developmentally disabled as to be unemployable, as required under the Individuals with Disabilities Education Act (IDEA). *Baer v. Klagholz*, 771 A.2d 603 (2001).

6A:14-4.8 Program criteria: home instruction

(a) A student classified as disabled shall have his or her IEP implemented through one to one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.

1. Prior written notification that a district intends to provide home instruction shall be provided to the Department of Education through its county office.

2. Notification shall be effective for a maximum of 60 calendar days at which time renewal of the notification may be made. Each renewal shall be for a maximum of 60 calendar days.

3. N.J.A.C. 6A:14-4.9(a)2, 3 and 4 shall apply.

4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days.

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

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

Rewrote (a)1 and 2.

Case Notes

Classified student was properly placed on home instruction due to his disruptive behavior. *East Windsor Board of Education v. B.F.*, 96 N.J.A.R.2d (EDS) 195.

Special education school's closure requires unprepared autistic student's home instruction under strict program until attainment of generalization. *J.S. v. High Bridge Board of Education*, 96 N.J.A.R.2d (EDS) 68.

Home instruction was not better for student than placement in self-contained class for pupils having emotional difficulties. *Hamilton Township v. J.C.*, 95 N.J.A.R.2d (EDS) 157.

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

Nosebleeds did not pose serious enough problem to warrant emergent relief in form of home instruction. *Mount Laurel Board v. C.S.*, 95 N.J.A.R.2d (EDS) 110.

Placement of violent student in home study program pending results of child study team. *Oaklyn Bd. of Educ. v. C.G.*, 93 N.J.A.R.2d (EDS) 97.

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

Gifted student with cerebral palsy was entitled to home instruction as interim placement. *J.M. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 249.

6A:14-4.9 Home instruction due to temporary illness or injury for students with or without disabilities

(a) To request home instruction due to temporary illness or injury, the parent shall submit a written determination from a physician documenting the need for confinement at the student's residence for at least a two week period of time. Home instruction for temporary illness or injury shall be provided according to the following:

1. The district board of education shall immediately forward the written request to the school physician, who shall verify the determination of the need for home instruction without delay;

2. Instructional services shall begin as soon as possible but no later than seven calendar days after the school physician's verification;

3. A record of the student's home instruction shall be maintained;

4. The teacher providing instruction shall be appropriately certified as teacher of the handicapped or for the subject or level in which the instruction is given;

5. Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days;

6. Instruction shall be provided at the student's place of confinement. If the student is confined to a hospital, convalescent home or other medical institution, the following criteria shall also apply:

i. Instruction shall be provided by a district board of education, educational services commission, State-operated facility, jointure commission or approved clinic or agency at the student's place of confinement;

ii. Instruction shall be provided through one to one instruction according to (a)5 above or through instruction to small groups as follows:

(1) When instruction is provided in a small group, the number of hours of instruction per week for the group shall be determined by multiplying the number of students in the group by five hours. The hours of instruction shall be provided in no fewer than three visits by a certified teacher on at least three separate days;

iii. Instruction may be provided by direct communication to a classroom program by distance learning devices. If provided, such instruction shall be provided in addition to the one to one according to (a)5 above or small group instruction according to (a)6ii above;

7. Students shall receive a program that meets the requirements of the district board of education for promotion and graduation;

8. For students with disabilities, the district shall provide a program that is consistent with the student's IEP to the extent appropriate. When the provision of home instruction will exceed 30 consecutive school days in a school year, the IEP team shall convene a meeting to review and if appropriate, revise the student's IEP; and

9. When a nondisabled student is confined at home or to a hospital by a physician for more than 60 calendar days, the school physician shall refer the student to the child study team according to N.J.A.C. 6A:14-3.3(e).

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

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

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

6A:14-4.10 Exceptions

(a) Exceptions for the age range and group sizes specified in N.J.A.C. 6A:14-4.4 through 4.7 shall be granted:

1. On an individual basis;
2. Only with prior written approval of the Department of Education through its county office; and
3. For a period not to exceed the balance of the school year.

(b) The county office shall determine whether the granting of the exception would interfere with the delivery of a

free, appropriate public education to the student, or other students in the group and on that basis shall either:

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

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

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

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

(f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter. Any waiver or equivalency previously granted under N.J.A.C. 6:3A for N.J.A.C. 6:28 shall expire on July 6, 1998.

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

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

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

6A:14-4.11 Statewide assessment

(a) Students with disabilities shall participate in the Statewide assessment system according to the following:

1. Except as provided in (a)2 below, students with disabilities shall participate in each content area of the general Statewide assessment for their grade or age. Accommodations and modifications approved by the Department of Education shall be provided when determined necessary by the IEP team to students with disabilities who participate in the general Statewide assessments.

2. Students with disabilities shall participate in the Alternate Proficiency Assessment (APA) in each content area where the nature of the student's disability is so severe that the student is not receiving instruction in any of the knowledge and skills measured by the general Statewide assessment and the student cannot complete any of the types of questions on the assessment in the content area(s) even with accommodations and modifications.

3. Following the 11th grade, students with disabilities who are required to pass the HSPA for graduation and have not done so shall participate in the SRA in accordance with N.J.A.C. 6A:8.

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

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

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

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

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

Rewrote the section.

6A:14-4.12 Graduation

(a) The IEP of a student with a disability who enters a high school program shall specifically address the graduation requirements. The student shall meet the high school graduation requirements according to N.J.A.C. 6A:8-5.1(c), except as specified in the student's IEP. The IEP shall specify which requirements would qualify the student with a disability for the State endorsed diploma issued by the school district responsible for his or her education.

(b) Graduation with a State endorsed diploma is a change of placement that requires written notice according to N.J.A.C. 6A:14-2.3(e) and (f).

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

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

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

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

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

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

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

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

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

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

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

Case Notes

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

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

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

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

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

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

6A:14-5.1 General requirements

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

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

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

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

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

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services. For the related services listed in (c)1iii and v below, approved private schools for the disabled may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services. All instructional, child study team and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team and related services personnel provided by approved clinics and agencies, or private professional practitioners, may provide services under this subsection if certified through the emergency certification process.

1. For public school students:

- i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5(b);
- ii. Child study team diagnostic services to supplement existing local district services;
- iii. The related services of occupational therapy, physical therapy and counseling;
- iv. Home instruction; and
- v. Speech-language services provided by a speech-language specialist when a district or private school for the disabled is unable to hire sufficient staff to provide the service.

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

- i. Evaluation, determination of eligibility, classification and the development of an individualized education program;
- ii. Supplementary instruction, speech-language services and home instruction for students determined eligible for such services; and
- iii. English as a second language according to N.J.A.C. 6A:15 and compensatory education according to N.J.S.A. 18A:46A-2e for students eligible for such services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from Department of Education approved clinics and agencies with the prior written

approval of the Department of Education through its county office according to the following:

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

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

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

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

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

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

In (c)2iii, updated N.J.A.C. reference.

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

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

Rewrote (c).

Case Notes

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

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

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

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

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county, or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;
3. A list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required and the function he or she shall fulfill;

- i. Professional staff employed by a clinic or agency who work full time according to N.J.A.C. 6:3-1.13 for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment;
 - ii. An employee of a district board of education shall not provide service as an employee of a clinic or agency to a student who is the responsibility of his or her employing district board of education;
4. Assurance that the clinic or agency has conducted the criminal history record check of each professional according to N.J.S.A. 18A:6-7.1;
- i. The clinic or agency shall maintain documentation of the information regarding the criminal history record check;
5. Assurance that the facility or facilities in which the services are being provided meet applicable building and other regulatory standards;
6. Assurance of an adequate accounting system according to generally accepted accounting principles;
7. Assurance of a system for the collection, maintenance, confidentiality and access of student records which is according to N.J.A.C. 6:3-6; and
8. Assurance of the maintenance of a log, which includes, but is not limited to:
- i. A list of services provided;
 - ii. The date, time and location of the services provided; and
 - iii. The names of the professional staff providing the services.
- (b) Any clinic or agency denied approval by the Department of Education may appeal the approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6A:3. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).
- (c) An approved clinic or agency may amend the services provided or the location of its facilities by obtaining prior written approval from the Office of Special Education Programs.
1. To amend the services provided, the agency or clinic shall submit the following:

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

ii. 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 will fulfill; and

iii. Assurance that the criminal history record check has been conducted according to N.J.S.A. 18A:6-7.1.

2. To amend the location of the facilities, the agency or clinic shall submit an assurance that the facility or facilities in which the services are to be provided meet applicable building and other regulatory standards.

(d) When a professional staff member leaves or a new professional staff member is hired, the approved clinic or agency shall provide the Office of Special Education Programs written notification within seven calendar days of the change.

(e) Failure to comply with the requirements of this section may result in the loss of approval.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).
In (b), changed N.J.A.C. reference.

Case Notes

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.

Child study team evaluation and diagnostic services may supplement, but not supplant, existing local district services. *Elson v. Hudson County Area Vocational-Technical Schools*, 96 N.J.A.R.2d (EDU) 229.

SUBCHAPTER 6. REQUIREMENTS FOR SERVICES IN NONPUBLIC SCHOOLS

6A:14-6.1 Equitable participation under IDEA Part B

(a) The board of education of the district of residence, as required by Federal law and regulation under Part B of the IDEA, shall provide a genuine opportunity for the equitable participation of students with disabilities who are enrolled in nonpublic schools or early childhood programs by their parents.

1. The district of residence shall make the final decisions with respect to the services to be provided to eligible students with disabilities enrolled in nonpublic schools or early childhood programs.

(b) The district of residence shall spend an amount of money equal to a proportionate amount of Federal funds available under Part B of the IDEA for the provision of

services to students with disabilities who are attending non-public schools.

(c) Those procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.

1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools or early childhood programs by their parents.

2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.

(d) If a nonpublic school student with a disability will receive special education or related services from the district of residence, the district shall:

1. Initiate and conduct meetings according to N.J.A.C. 6A:14-2.3(i) to develop, review and revise a service plan for the student.

i. For the services provided, the service plan for a student with a disability enrolled in a nonpublic school or early childhood program shall include the components described in N.J.A.C. 6A:14-3.7(d)1 through 4, (d)6 and (d)12 through 14. The transition requirements described in N.J.A.C. 6A:14-3.7(d)7 through 11 shall be included only when the district of residence is providing transition services to the student; and

2. Ensure that a representative of the nonpublic school or early childhood program attends each meeting. If the representative of the nonpublic school cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

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; added (a)1; in (c), added 1 and 2; and added (d).

Case Notes

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

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

school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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

Necessity of electric shock treatment for developmentally disabled child established by clear and convincing evidence; other treatments had proven ineffective, child had caused much injury to herself, electric shock treatment through Self-Injurious Behavior Inhibiting System had decreased child's self-injurious behavior, risks inherent in use of SIBIS were low, and benefits outweighed risks. *In re J.M.*, 292 N.J.Super. 225, 678 A.2d 751 (Ch.1996).

District where nonpublic school was located would be responsible for providing Chapter 192-193 services to students attending that school. *Board of Education of the City of Clifton v. State-operated School District of the City of Paterson*, 96 N.J.A.R.2d (EDU) 811.

Reimbursement request for costs of special education student's private school placement was denied where testimony of student's former teacher indicated that in-district placement conferred educational benefit. *E.S.G. v. Collingswood Board of Education*, 96 N.J.A.R.2d (EDS) 213.

Reimbursement for out-of-district placement was denied where child study team found in-district placement to be appropriate. *C.G. v. Oakland Board of Education*, 96 N.J.A.R.2d (EDS) 199.

Student with learning disabilities was entitled to continuing placement in private school subsidized by local board of education during pendency of due process hearing. *K.G. v. Haddonfield Board of Education*, 96 N.J.A.R.2d (EDS) 103.

Reimbursement for private school costs denied when classified student's placement at public school would have afforded him opportunity to receive free and appropriate public education. *R.W. v. Montgomery Township Board of Education*, 96 N.J.A.R.2d (EDS) 78.

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.

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.

Difficulties in auditory processing and visual perception of neurologically impaired child with Tourette's syndrome demonstrated acute need for placement in private school. *E.J. v. Mansfield Board*, 95 N.J.A.R.2d (EDS) 235.

Placement in class for neurologically impaired students at local school, rather than private school placement, was appropriate placement for classified student making cognitive and academic progress. *J.J. v. Bound Brook Board*, 95 N.J.A.R.2d (EDS) 230.

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.

School district was required to provide reimbursement for occupational therapy given neurologically impaired child to replace that which she should have received while domiciled in school district. *G.K. v. Cherry Hill Board*, 95 N.J.A.R.2d (EDS) 197.

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*, 95 N.J.A.R.2d (EDS) 193.

School district was required to pay for specialized educational program of domiciled child obliged to seek school with program outside district. *J.D. and K.D. v. Middletown Board of Education*, 95 N.J.A.R.2d (EDU) 154.

Tuition and transportation costs for out-of-district placement were reimbursable. *J.B. v. Hamilton Township*, 95 N.J.A.R.2d (EDS) 64.

Board liable for tuition and costs related to handicapped student's placement in private school. *J.E. v. Montgomery Township Board of Education*, 94 N.J.A.R.2d (EDS) 191.

Parents entitled to reimbursement for educationally disabled student's placement at private school. *M.P. v. Summit Board of Education*, 94 N.J.A.R.2d (EDS) 156.

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

Costs for disabled child's out-of-state placement were shared by school districts in which divorced parents with joint custody were domiciled. *J.K. v. West Milford and Roxbury*, 93 N.J.A.R.2d (EDS) 145.

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

Full cost, rather than costs on a pro-rata basis, was amount parents were to be reimbursed for private school tuition. *M.Y., a Minor Child v. Fair Lawn*, 93 N.J.A.R.2d (EDS) 91.

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

In-district placement of 15-year-old neurologically impaired student was appropriate; no reimbursement for unilateral placement out-of-district. *T.G. v. Middletown Township Board of Education*, 93 N.J.A.R.2d (EDS) 66.

Blind, multiply handicapped child with behavioral problems was shown to need 12-month residential placement. *L.P. v. Edison Board of Education*, 92 N.J.A.R.2d (EDS) 259.

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

Unilateral decision to place the child in a private school; no tuition reimbursement. *C.R. v. Delaware Valley Regional School District*, 92 N.J.A.R.2d (EDS) 31.

Parents not entitled to reimbursement for cost of sending fifth-grade student to private school. *M.R. v. Montville Board of Education*, 92 N.J.A.R.2d (EDS) 20.

Private schools required approval by Bureau of Special Education and Pupil Personnel under former N.J.A.C. 6:28-4.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation. *Atty.Gen.F.O.1981, No. 1.*

6A:14-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) The board of education of the district in which the nonpublic school is located shall provide to nonpublic school students the programs and services required by this subchapter by itself, or through joint agreements with other boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6A:14-5.

(b) Specifications for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.

(c) Identification, evaluation, determination of eligibility, development of service plans and the provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(d) English as a second language shall be provided according to N.J.S.A. 18A:46A-2c.

(e) Compensatory education shall be provided according to N.J.S.A. 18A:46A-2e.

(f) All special education programs and services required by this subchapter shall be provided with parental consent in accordance with N.J.A.C. 6A:14-2.3.

(g) Those procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.

1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools.

i. For the services provided, the service plan for a student with a disability enrolled in a nonpublic school shall include the components described in N.J.A.C. 6A:14-3.7(d)1 through 4, (d)6 and (d)12 through 14.

2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.

(h) Personnel providing a program or service under this subchapter shall meet appropriate certification and if required, licensing requirements. Personnel shall not be employed by the nonpublic school in which the student is enrolled with the exception of personnel providing the types of instruction specified in N.J.A.C. 6A:14-5.1(c)2ii and iii.

(i) Programs and services for nonpublic school students shall be provided in facilities approved by the Department of Education through its county superintendent of schools according to N.J.S.A. 18A:46-5 and 18A:46-19.5.

(j) Public and nonpublic school students may be grouped for speech correction and the other instructional programs provided under this subchapter, when appropriate.

(k) When the provision of programs and/or services under this subchapter requires transportation or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall pro-

vide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter.

(l) The board of education of the district in which the nonpublic school is located shall maintain all records of nonpublic school students receiving programs and/or services under this subchapter according to N.J.A.C. 6:3-6.

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

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

In (c), substituted a reference to service plans for a reference to individualized education programs; and in (g), added l and 2.

6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Each board of education of the district in which the nonpublic school is located shall provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds.

(b) Each board of education of the district in which the nonpublic school is located shall maintain an accounting system for nonpublic programs and services according to N.J.A.C. 6A:23-2.

(c) At the close of each school year, the board of education shall report to the Department of Education the total district cost for programs and services provided under this subchapter.

(d) Each board of education of the district in which the nonpublic school is located shall receive State aid for programs and services required by this subchapter for the succeeding school year as available from appropriated funds for nonpublic school programs and services.

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

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

In (b), amended NJAC reference.

Case Notes

Teacher did not accrue secondary seniority credits by providing statutorily mandated services in public school to parochial students. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

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.

Case Notes

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

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

6A:14-6.5 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, school age 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 of Education, by an order of a court of competent jurisdiction, or by order of an administrative law judge as a result of a due process hearing. 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) or by an administrative law judge as a result of a due process hearing.

(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:14-3.7(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. 6A:8-3.1, 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:14-3.7(d)5 and 7;

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 disabled 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 non-public 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.

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 "of Education" following "Commissioner"; and added references to placement of students by order of an administrative law judge as a result of a hearing.

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

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

In (b), amended NJAC references.

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.

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.

Law Reviews and Journal Commentaries

Out-Of-District Placement for the Special Needs Child. Michaelene Loughlin, Sherry Chachkin, 222 N.J.L.J. 43 (2003).

SUBCHAPTER 7. RECEIVING SCHOOLS

Case Notes

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

6A:14-7.1 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.

Public school unable to compel private school to re-admit expelled student. *H.F. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 101.

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. 6A:3.

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.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).
In (a)2, changed N.J.A.C. reference.

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. 6A:23 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.

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

In (a), amended NJAC reference.

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.

(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.

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

In (c), deleted a reference to each school year.

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.

6A:14-7.6 Provision of programs

(a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6A:14-2.8, 4.1 and 4.3 through 4.11, and to the student's IEP.

(b) When the parent or district board of education requests mediation or due process, the student with a disability shall remain in the current placement, according to N.J.A.C. 6A:14-2.6(d)9 or 2.7(j) as applicable.

(c) Students with disabilities who are placed in receiving schools may be suspended for up to 10 consecutive or cumulative school days in a school year by the receiving school. Such suspensions are subject to the same procedures as nondisabled students. However, at the time of suspension, the principal of the receiving school shall forward written notification and a description of the reasons for such action to the case manager.

(d) A receiving school shall not unilaterally implement disciplinary action involving removal to an interim alternative educational setting, suspension of more than 10 consecutive or cumulative school days in a school year or expulsion of a student with a disability. Such disciplinary action shall be implemented in conjunction with the sending district board of education according to N.J.A.C. 6A:14-2.8.

(e) Educational programs shall be open to observation at any time to the representatives of the sending district board of education and of the Department of Education.

(f) With prior written approval of the Department of Education, a school described in N.J.A.C. 6A:14-7.1(a) may operate an extended academic year program.

(g) A provider of programs under this subchapter shall notify the Department of Education 90 calendar days prior to ceasing operation.

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

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

In (d), inserted "consecutive or cumulative" preceding "school days"; and amended the N.J.A.C. reference in the last sentence.

6A:14-7.7 Termination or withdrawal from a receiving school

(a) When a receiving school is considering the termination of a student's placement prior to the end of the student's academic year, the receiving school shall immediately contact the district board of education. The district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(i)2. Such meeting shall occur without delay and shall include the participation of appropriate personnel from the receiving school.

1. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided without delay. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(b) When the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year, the district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(i)2. Such meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided without delay. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(c) Prior to a parent withdrawing a student with a disability from a receiving school, the parent shall request that the district board of education convene an IEP meeting according to N.J.A.C. 6A:14-2.3(i)2.

(d) A student with a disability shall receive a diploma if the requirements of N.J.A.C. 6A:14-4.12 are met.

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

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

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

6A:14-7.8 Fiscal management

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

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

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

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

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

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

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

Amended NJAC references throughout.

6A:14-7.9 Records

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6:3-6 pertaining to student records. In addition:

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

2. Requests for access to student records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-6 shall be directed to the chief school administrator or his or her designee of the district board of education having responsibility for the student with a disability.

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained

in accordance with N.J.A.C. 6A:23 and made available to the district board of education upon request. Habitual tardiness or prolonged absences shall be reported in writing to the chief school administrator of the district board of education or his or her designee.

(b) Student progress reports shall be submitted at least three times a year or as stipulated in the contract.

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

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

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

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

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

In (a)3, amended NJAC reference.

6A:14-7.10 Monitoring and corrective action

(a) The Department of Education shall monitor approved private schools for the disabled according to N.J.A.C. 6A:14-9.1. On site monitoring shall be conducted at least every six years.

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS AND HUMAN SERVICES, AND THE JUVENILE JUSTICE COMMISSION

6A:14-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6A:17-3 and the requirements of this chapter.

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

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

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

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

(e) Each district board of education shall provide mandated student records according to N.J.A.C. 6:3-6 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent shall receive notification of the release of these records to the facility. Permitted records according to N.J.A.C. 6:3-6 shall be released only with consent.

(f) For a student in residence in a State facility, the responsible district board of education shall maintain the educational records sent by the State facility according to N.J.A.C. 6:3-6.

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

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

1. If the student is disabled, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current individualized education program.
2. If the student is not currently classified as disabled, or if the State facility does not have current school records, within 30 calendar days the State facility shall review the student's educational status and determine if referral to the child study team is required.

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

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

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

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

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

In (a), amended NJAC reference.

Case Notes

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

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

6A:14-8.2 Procedural safeguards

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

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

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

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

6A:14-8.3 Provision of programs

(a) A residential State facility may recommend placement of a student with a disability in a local school district. Documentation of attempts to place the student in the least restrictive environment according to N.J.A.C. 6A:14-4.2 shall be stated in the student's IEP. Tuition shall be paid by the State facility to the local board of education where the student is placed.

(b) All personnel providing special education programs according to N.J.A.C. 6A:14-4.1 or 4.3 through 4.6, related services according to N.J.A.C. 6A:14-3.8, or multi-disciplinary team services according to N.J.A.C. 6A:14-3.1 shall hold the appropriate educational certificate and, if required, a license for the position in which they function.

(c) Day school programs operated by the Department of Human Services shall be provided in the following manner:

1. The Department of Human Services shall provide educational programs and related services for students with disabilities in State-operated or contracted facilities;
2. The district board of education shall be responsible for providing the services according to N.J.A.C. 6A:14-3.3 through 3.8. The day school program is responsible for implementing the IEP developed by the district board of education; and
3. The district board of education shall be responsible to monitor the student's placement at least annually to ensure the implementation of the IEP.

(d) An educational program for students with disabilities in a State residential facility shall be commensurate with those in a day school program.

(e) For students placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6A:14-2.3(i).

(f) When a student in a State facility is in need of home instruction according to N.J.A.C. 6A:14-4.9, the State facility shall implement the home instruction program.

Case Notes

N.J.A.C. 6:28-8.3(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div. 1985).

SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

6A:14-9.1 Monitoring and corrective action

(a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey statutes, the New Jersey Administrative Code, the approved special education plan and Federal requirements under the Individuals with Disabilities Education Act (IDEA).

(b) The monitoring process may include, but is not limited to:

1. Review of data, reports and student records;
2. On-site visits;
3. Comparison of a sample of individualized education programs with the programs and services offered; and
4. Audit of Federal and State funds.

(c) After the monitoring process is completed, a report shall be written and sent to the public or private agency.

(d) If the public or private agency receives a final review report that indicates noncompliance, a corrective action plan shall be developed by the agency and submitted to the Department of Education through the county office for approval.

(e) The corrective action plan shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed; and
2. The dates by which noncompliance will be corrected.

(f) The Department of Education through its county office shall review the corrective action plan and notify the agency if it is acceptable.

(g) When a corrective action plan is not submitted, found unacceptable or not implemented, the Department of Education shall notify the agency of the actions that it intends to take.

(h) An appeal of the denial of approval of a corrective action plan, imposition of sanctions or determination of noncompliance may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

(i) The Department of Education shall maintain monitoring records for a period of at least five years.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

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

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

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

In (a), added a reference to Federal requirements under IDEA.

6A:14-9.2 Complaint investigation

(a) The State Director of the Office of Special Education Programs or designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint regarding the provision of special education and related services covered under this chapter.

(b) An organization or individual may request a complaint investigation by submitting a written signed request to the State Director of the Office of Special Education Programs. The complaint shall include:

1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
2. The facts on which the statement is based; and
3. The time period when the alleged violation occurred.

i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received unless:

(1) A longer period is reasonable because the violation is continuing; or

(2) The complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

(c) The Office of Special Education Programs in conjunction with the county office of education shall complete an investigation within 60 calendar days after receipt of the written signed complaint.

1. The investigation may include, but not be limited to:

- i. Review of policies and procedures;
- ii. Review of student record(s);
- iii. Observation of programs; and
- iv. Interview(s).

2. The complainant shall be given the opportunity to provide additional information, either orally or in writing about the allegations in the complaint.

3. The State Director of the Office of Special Education Programs may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint.

(d) If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Office of Special Education Programs shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing shall be resolved according to (c) above.

1. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and the Office of Special Education Programs shall inform the complainant to that effect.

(e) A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to all parties within 60 calendar days after receipt of the written signed complaint.

(f) If the education agency is found to be in noncompliance, a corrective action plan shall be developed and submitted to the Office of Special Education Programs.

(g) The corrective action plan shall include, but not be limited to:

1. Objectives, strategies and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and
2. The dates by which the noncompliance will be corrected.

(h) The State Director of the Office of Special Education Programs shall review the corrective action plan and notify the education agency if it is acceptable.

(i) The Office of Special Education Programs shall review and verify the implementation of the corrective action plan.

(j) When a corrective action plan is not submitted, is unacceptable or is not implemented, the Office of Special Education Programs shall notify the agency of the actions it intends to take.

(k) Nothing in this section shall be construed as limiting the right of parents or adult students to seek a due process hearing with regard to issues raised in a request for complaint investigation. If a due process hearing is sought while a complaint investigation is pending, the complaint investigation with respect to all issues in the request for a due process hearing shall be halted pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed in accordance with (d) above.

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

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

Amended (b); in (c), added a new 2 and recodified former 2 as 3; added a new (d) and recodified former (d) as (e); and recodified former (e) through (i) as (f) through (j).

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

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

Rewrote the section.

Case Notes

State special education regulations addressing complaint time limitations and procedures applicable to complaint and due process hearing request concerning the same issue mirrored language of equivalent federal regulations and satisfied federal requirements. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations concerning implementation of final decisions of state educational agency (SEA) with respect to complaint investigations sufficiently complied with federal requirement that corrective action plan be developed and all aspects of final decision be implemented, and were broad enough to encompass all needed implementation tools, despite failure to specify therein particular implementation procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations governing complaint procedures, requiring development of corrective action plan, requiring that objectives and strategies for correcting each non-compliance item be set forth in such plan, and permitting the state Department of Education to take any action deemed necessary should corrective action plan be inadequate, were sufficient to conform to federal regulatory requirements that deficiencies be remediated and appropriate services provided to students with disabilities. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring "a report of findings [and] conclusions" in connection with minimum state complaint procedures required determination as to whether public agency had violated any requirement of the Individuals with Disabilities Education Act (IDEA), as mandated by federal regulations, despite failure to specify particular determinations required to be made in connection with complaint procedures; state regulation's list of activities to be undertaken in investigating complaints was not exclusive, and investigation of and report on complaints of IDEA violations was clearly within its contemplated scope. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Under state special education regulations governing notice of corrective actions intended to be taken by the state Department of Education in response to parent complaints, county office of education was required to notify a noncompliant educational agency should local education agency (LEA) fail to do so. *Baer v. Klagholz*, 771 A.2d 603 (2001).

SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS**6A:14-10.1 Early intervention programs serving children between birth and age three**

Early intervention programs shall be administered by the Department of Health and Senior Services as the lead agency in collaboration with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health and Senior Services for students age three

(a) When an IEP is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that student by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6A:14-1.1(d) shall be met;

2. A contractual agreement shall be provided between the district board of education and the early intervention program;

3. Personnel shall be appropriately certified and, if required, licensed; and

4. Applications for exceptions according to N.J.A.C. 6A:14-4.10 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

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

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

In (a)4, amended NJAC reference.

APPENDIX A

Individuals with Disabilities Education Act Amendments
of 2004

20 U.S.C. §1415

20 U.S.C.A. §1415

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has

refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 812(c) of Title 21.

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of Title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18.

20 U.S.C.A. §1412

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

20 U.S.C.A. §1414

(a) Evaluations, parental consent, and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this part.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures—

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title) but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

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

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c) of this section—

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

(B) Limitation

A reevaluation conducted under subparagraph (A) shall occur—

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

(b) Evaluation procedures

(1) Notice

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

(2) Conduct of evaluation

In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that—

(A) assessments and other evaluation materials used to assess a child under this section—

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures—

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities

(A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including—

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D) of this section, prior to conducting any reevaluation of a

child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency—

(A) shall notify the child's parents of—

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Recodified from N.J.A.C. 6A:14 Appendix by R.2000 d.230, effective June 5, 2000.

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

Administrative change.

See: 37 N.J.R. 4404(a).

APPENDIX B

34 C.F.R. § 300.24—Related Services (64 Fed. Reg. 12423-12424, March 12, 1999)

§ 300.24 Related services.

(a) *General.* As used in this part, the term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) *Individual terms defined.* The terms used in this definition are defined as follows:

(1) *Audiology* includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) *Counseling services* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) *Early identification and assessment of disabilities in children* means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) *Medical services* means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) *Occupational therapy*—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(6) *Orientation and mobility services*—

(i) Means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching students the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(7) *Parent counseling and training* means—

(i) Assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(8) *Physical therapy* means services provided by a qualified physical therapist.

(9) *Psychological services* includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(10) *Recreation* includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(11) *Rehabilitation counseling services* means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(12) *School health services* means services provided by a qualified school nurse or other qualified person.

(13) *Social work services in schools* includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(14) *Speech-language pathology services* includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(15) *Transportation* includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(22))

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

APPENDIX C

§ 300.26 Special education.

(a) *General.* (1) As used in this part, the term *special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes each of the following, if it meets the requirements of paragraph (a)(1) of this section:

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) *Individual terms defined.* The terms in this definition are defined as follows:

(1) *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude

incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) *Physical education*—

(i) Means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) *Specially-designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that he or she

can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) *Vocational education* means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(25))

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

APPENDIX D

34 C.F.R. §§300.519 to 529—Discipline Procedures (64 Fed. Reg. 12453-12455, March 12, 1999)

Discipline Procedures**§ 300.519 Change of placement for disciplinary removals.**

For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.520–300.529, a change of placement occurs if—

(a) The removal is for more than 10 consecutive school days; or

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

(Authority: 20 U.S.C. 1415(k))

§ 300.520 Authority of school personnel.

(a) School personnel may order—

(1)(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under § 300.121(d); and

(2) A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if—

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under § 300.519, including the action described in paragraph (a)(2) of this section—

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under § 300.519, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) *Illegal drug*—

(i) Means a controlled substance; but

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1), (10))

§ 300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to

an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing—

(a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the 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; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of § 300.522(b).

(e) As used in this section, the term *substantial evidence* means beyond a preponderance of the evidence.

(Authority: 20 U.S.C. 1415(k)(2), (10))

§ 300.522 Determination of setting.

(a) *General.* The interim alternative educational setting referred to in § 300.520(a)(2) must be determined by the IEP team.

(b) *Additional requirements.* Any interim alternative educational setting in which a child is placed under §§ 300.520(a)(2) or 300.521 must—

(1) Be selected so as to 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

(2) Include services and modifications to address the behavior described in §§ 300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

(Authority: 20 U.S.C. 1415(k)(3))

§ 300.523 Manifestation determination review.

(a) *General.* If an action is contemplated regarding behavior described in §§ 300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under § 300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children—

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural

safeguards notice described in § 300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) *Individuals to carry out review.* A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) *Conduct of review.* In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel—

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including —

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and
(iii) The child's IEP and placement;

and

(2) Then determine that—
(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) *Decision.* If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) *Meeting.* The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under § 300.520(b).

(f) *Deficiencies in IEP or placement.* If, in the review in paragraphs (b) and (c) of this section, a public agency identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

(Authority: 20 U.S.C. 1415(k)(4))

§ 300.524 Determination that behavior was not manifestation of disability.

(a) *General.* If the result of the review described in § 300.523 is a determination, consistent with § 300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in § 300.121(d).

(b) *Additional requirement.* If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) *Child's status during due process proceedings.* Except as provided in § 300.526, § 300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in § 300.523, that the behavior of the child was not a manifestation of the child's disability.

(Authority: 20 U.S.C. 1415(k)(5))

§ 300.525 Parent appeal.

(a) *General.* (1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§ 300.520–300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) *Review of decision.* (1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of § 300.523(d).

(2) In reviewing a decision under § 300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in § 300.521.

(Authority: 20 U.S.C. 1415(k)(6))

§ 300.526 Placement during appeals.

(a) *General.* If a parent requests a hearing or an appeal regarding a disciplinary action described in § 300.520(a)(2) or 300.521 to challenge

the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in § 300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State, agency or local educational agency agree otherwise.

(b) *Current placement.* If a child is placed in an interim alternative educational setting pursuant to § 300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) *Expedited hearing.* (1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in § 300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

(Authority: 20 U.S.C. 1415(k)(7))

§ 300.527 Protections for children not yet eligible for special education and related services.

(a) *General.* A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§ 300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) *Basis of knowledge.* An LEA must be deemed to have knowledge that a child is a child with a disability if—

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with § 300.7;

(3) The parent of the child has requested an evaluation of the child pursuant to §§ 300.530–300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency—

(1) Either—

(i) Conducted an evaluation under §§ 300.530–300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with § 300.503.

(d) *Conditions that apply if no basis of knowledge.* (1) *General.* If an LEA does not have knowledge that a child is a child with a disability (in accordance

with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) *Limitations.* (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§ 300.520–300.529 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(8))

§ 300.528 Expedited due process hearings.

(a) Expedited due process hearings under §§ 300.521–300.526 must—

(1) Meet the requirements of § 300.509, except that a State may provide that the time periods identified in §§ 300.509(a)(3) and § 300.509(b) for purposes of expedited due process hearings under §§ 300.521–300.526 are not less than two business days; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of § 300.508.

(b)(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under §§ 300.521–300.526 than it has established for due process hearings under § 300.507.

(d) The decisions on expedited due process hearings are appealable consistent with § 300.510.

(Authority: 20 U.S.C. 1415(k)(2), (6), (7))

§ 300.529 Referral to and action by law enforcement and judicial authorities.

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(9))

APPENDIX E

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§300.125 Child find.

(a) *General requirement.* (1) The State must have in effect policies and procedures to ensure that

(i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(2) The requirements of paragraph (a) (1) of this section apply to

(i) Highly mobile children with disabilities (such as migrant and homeless children); and

(ii) Children who are suspected of being a child with a disability under § 300.7 and in need of special education, even though they are advancing from grade to grade.

(b) *Documents relating to child find.* The State must have on file with the Secretary the policies and procedures described in paragraph (a) of this section, including

(1) The name of the State agency (if other than the SEA) responsible for

coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;

(3) A description of how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the SEA obtains

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(4) A description of the method the State uses to determine which children are currently receiving special education and related services.

(c) *Child find for children from birth through age 2 when the SEA and lead agency for the Part C program are different.* (1) In States where the SEA and the State's lead agency for the Part C program are different and the Part C lead agency will be participating in the child find activities described in paragraph (a) of

this section, a description of the nature and extent of the Part C lead agency's participation must be included under paragraph (b) (2) of this section.

(2) With the SEA's agreement, the Part C lead agency's participation may include the actual implementation of child find activities for infants and toddlers with disabilities.

(3) The use of an interagency agreement or other mechanism for providing for the Part C lead agency's participation does not alter or diminish the responsibility of the SEA to ensure compliance with the requirements of this section.

(d) *Construction.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability listed in § 300.7 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

(e) *Confidentiality of child find data.* The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of §§ 300.560-300.577.

(Authority: 20 U.S.C. 1412 (a) (3) (A) and (B))

New Rule, R.2001 d.397, effective November 5, 2001.
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).