

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.

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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 1iii 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.

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(g), or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented (see chapter Appendix); 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 preceeding calendar days; added (d)10.

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. 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.

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 C.F.R. §§ 300.520 through 300.528. See chapter Appendix. 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. 6:24.

(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, reevaluation, implement an initial IEP 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.

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.

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.