CHAPTER 6A

SPECIAL EDUCATION PROGRAM

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2010 d.275, effective October 29, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

Chapter Expiration Date

Chapter 6A, Special Education Program, expires on October 29, 2015.

Chapter Historical Note

Chapter 6A, Special Education Program, was adopted as R.1982 d.462, effective January 3, 1983. See: 14 N.J.R. 930(a), 15 N.J.R. 25(b).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1987 d.200, effective May 4, 1987, operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1990 d.169, effective March 19, 1990. See: 21 N.J.R. 2693(a), 22 N.J.R. 916(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.1995 d.176, effective February 27, 1995. See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.2000 d.94, effective February 10, 2000. See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Chapter 6A, Special Education Program, was readopted as R.2005 d.261, effective July 11, 2005. See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Chapter 6A, Special Education Program, was readopted as R.2010 d.275, effective October 29, 2010. As a part of R.2010 d.275, Subchapter 3, Commencement of Case, was adopted as new rules, effective December 6, 2010. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY

1:6A-1.1   Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6A:14. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

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

Law Reviews and Journal Commentaries

Procedural Basics of Special Education Hearings. Joseph R. Morano, 222 N.J.L.J. 1 (2003).

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)1994, 42 F.3d 149, rehearing and rehearing in banc denied.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. COMMENCEMENT OF CASE

1:6A-3.1 Commencement of case

Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7, the Office of Special Education Programs shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6A-4.1 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any request for an adjournment based upon on-going settlement efforts by the parties shall comply with the requirements of N.J.A.C. 1:6A-9.2.

The following annotations apply to N.J.A.C. 1:6A-4.1 prior to its repeal by R.2010 d.275:

Amended by R.1990 d.405, effective August 6, 1990.
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).
  In (f): Added language specifying that parents shall provide the Department with a telephone number for contact.
Recodified from N.J.A.C. 1:6A-4.2 and amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
  Rewrote the section. Former N.J.A.C. 1:6A-4.1, Notice of available legal service, repealed.
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

In (a), substituted "offer mediation" for "determine whether mediation is requested" in the introductory paragraph and rewrote 2; rewrote (c) and (d).

The following annotation applies to N.J.A.C. 1:6A-4.1 subsequent to its recodification from N.J.A.C. 1:6A-4.3 by R.2010 d.275:

Recodified from N.J.A.C. 1:6A-4.3 and amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
  Rewrote (b). Former N.J.A.C. 1:6A-4.1, Mediation by the Department of Education, repealed.

Case Notes

Commissioner of Education lacks jurisdiction to enforce settlement agreement in special education case. Bellesfield v. Randolph Township Board of Education, 96 N.J.A.R.2d (EDU) 35.

1:6A-4.2 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

1:6A-4.3 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
  Section was "Ongoing settlement efforts".

SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation

(a) At a hearing, any party may be represented by legal counsel or accompanied and advised by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both. Parents and children may be represented by individuals with special knowledge or training with respect to handicapped pupils and their educational needs.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

Amended by R.1995, d.176, effective March 20, 1995.
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:6A-9.1 Scheduling of hearing by Office of Administrative Law

(a) Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7, the repre-