1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:

1. There shall be no resolution period or opportunity for a resolution meeting pursuant to (h) above with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and

2. The provisions of (d), (e) and (f) above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

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 "revaluation", 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.
Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).
Rewrote the section.
Notice of readoption with technical change.
See: 45 N.J.R. 1909(c).

Law Review and Journal Commentaries

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

Case Notes

Administrative exhaustion is required before a district court can provide review under 20 U.S.C. § 1415(e)(2) of a school district's determination that a student's misbehavior and misconduct is not a manifestation of his disability: (1) a manifestation determination is most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provide a mechanism for obtaining administrative review of a manifestation determination; and (3) the development of the record, through the administrative review process, is necessary for a court to determine whether or not an alleged manifestation determination error has been made, whether the student's federal rights have been violated as a result of that error, and whether the student is entitled to damages. Gutin v. Wash. Twp. Bd. of Educ., 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

District court could not review, pursuant to 20 U.S.C. § 1415(e)(2), a school district's determination that a student's use of drugs was not a manifestation of his Attention Deficit Disorder (ADD) because the student's parents had not exhausted their administrative remedies by filing an administrative appeal challenging that determination: (1) a manifestation determination was most appropriately reviewed in the first instance by experienced educators; (2) 20 U.S.C. § 1415(k)(6)(A) and N.J.A.C. 6A:14-2.7 provided a mechanism for administratively appealing manifestation determinations; and (3) requiring exhaustion of administrative remedies with regard to claims based on alleged manifestation determination errors was appropriate because, to award damages for such an alleged error, a court would necessarily have to decide whether the behavior at issue was a manifestation of the student's disability, and the use of the administrative process would help develop the record and establish whether or not a violation of federal law had occurred. Gutin v. Wash. Twp. Bd. of Educ., 467 F.Supp.2d 414, 2006 U.S. Dist. LEXIS 92451 (D.N.J. 2006).

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.

Authorizing the Office of Special Education Programs to issue the final decision in complaint investigations under N.J.A.C. 6A:14-9.2 is consistent with the overall scheme of resolving individual complaints under the Individuals with Disabilities Education Act; even when a parent or school district receives a due process hearing under N.J.A.C. 6A:14-2.7, the Commissioner of Education does not issue the final administrative decision. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

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).

Both a school district and academy at which the district had placed a disabled student violated state and federal law by excluding the student from his program pending a psychiatric evaluation and not holding a manifestation determination by the tenth day that he was out of school. The district also violated law by unilaterally withdrawing the student from his last agreed-upon placement at the academy and placing him on on-line home instruction in disregard of his IEP. Given these facts, moreover, no relief was properly granted to any party under emergent relief provisions because they were inapplicable. E.Z. ex rel. D.Z. v. Audubon Bd. of Educ. and Hampton Academy, OAL DKT. NO. EDS 9213-16, 2016 N.J. AGEN LEXIS 609, Corrected Decision on Emergent Relief (July 15, 2016).

Due Process petition filed by the parents of a student who was eligible for special education services was properly dismissed on account of the parents' failure to cooperate with the school board in scheduling a local resolution meeting because the parents were required to cooperate with the process and they clearly failed to do so. S.Z. and J.Z. ex rel. G.Z. v. Sch. Distr. of the Chathams, Bd. of Educ., OAL DKT. NO. EDS 08680-16, 2016 N.J. AGEN LEXIS 608, Final Decision (July 15, 2016).

Parents of a special education student prevailed on claims that a school district did not provide the student with a free appropriate public education in violation of state and federal law. Among other failures, the district failed to obtain the parents' consent to certain evaluations, rendering the student's IEPs invalid; failed to prepare appropriate IEPs for the student; failed to comply with the terms of the IEPs as prepared relative to mastery of certain skills because proper progress reporting was not accomplished, thereby rendering it impossible to assess whether the student was making progress. Because a meaningful educational benefit was not conferred on the student and because it appeared that the student would obtain a meaningful benefit if placed in the out-of-district school identified by the parents, the district was properly ordered to provide two years of compensatory education at that school including extended school year programs and transportation. P.B. and M.B. ex rel. H.B. v, Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 10957-13, 2016 N.J. AGEN LEXIS 611, Final Decision (July 14, 2016).

Where a special education student's IEP did not provide for Extended School Year (ESY) instruction, a right to emergent relief to require a district to place the student in a summer program at a substance abuse facility was not shown. The IEP did not provide for ESY and there was no showing that ESY was necessary to avoid regression, so there was not a likelihood of success on the merits on the claim that the student was entitled to ESY. Moreover, since the facility chosen by the parents was not a "school," ESY at that facility was not authorized in any event. J.T. ex rel. E.M. v. Jersey City Bd. of Educ., OAL DKT. NO. EDS 09745-16, 2016 N.J. AGEN LEXIS 610, Final Decision (July 13, 2016).

Irreparable harm sufficient to justify a grant of emergent relief was established by a school district that sought to compel the mother of a special education student to consent to a release of the student's records so that the district could provide them to several private institutions which sponsored educational programs of the type that might meet the student's needs. The mother had refused to authorize the record release on the ground that she would only permit her son to be enrolled in a public program. The mother's refusal was preventing the district from providing the child with an educational program that was designed to address his needs and all prerequisites to a grant of emergent relief were satisfied. Franklin Twp. Bd. of Educ. v. N.K. ex rel. M.M., OAL DKT. NO. EDS 07818-16, 2016 N.J. AGEN LEXIS 440, Decision on Emergent Relief (June 6, 2016).

Because a school district's proposed in-district program for a disabled child per a proposed IEP did not provide the child with a "free, appropriate public education," it was not unreasonable for the parents to unilaterally arrange for their son to be educated in an out-of-district placement for the relevant school year. It was no defense for the district to claim that the parents' failure to provide them with certain records prevented the district from creating an appropriate IEP because the district did not invoke a due process hearing to obtain release of the records. The district thus was properly required to create a new IEP that reflected that out-of-district placement. That said, the parents' documented failure to provide such documents and their failure to cooperate with the district justified an order limiting the district's reimbursement liability to 50% of the cost of the out-of-district placement. G.S. and N.M. ex rel. E.S. v. Parsippany-Troy Hills Twp. Bd. of Educ., OAL DKT. NO. EDS 13568-15, 2016 N.J. AGEN LEXIS 449, Final Decision (June 3, 2016).

Irreparable harm sufficient to justify a grant of emergent relief was established by a school board that was seeking to compel the parents of a special education student whose parents refused to consent to a proposed psychiatric evaluation. The refusal was the cause of a break in the delivery of required services by the board and had prevented the board from determining the appropriate next steps for the student, whose continuously disruptive behavior was frustrating the board's efforts to provide him for a FAPE. Clifton Bd. of Educ. v. I.Y. and M.Y. ex rel. D.Y., OAL DKT. NO. EDS 07235-16, 2016 N.J. AGEN LEXIS 397, Decision on Motion for Emergent Relief (May 25, 2016).

Due process hearing was not available to parents who were challenging the response of a local board of education to the parents' request that they be supplied with student records because student records were not included within the scope of matters that could be the subject of such a hearing, being "...identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action." D.O. ex rel. M.O. v. Jackson Twp. Bd. of. Educ., OAL DKT. NO. EDS 14390-15, 2016 N.J. AGEN LEXIS 137, Order Dismissing Petition (March 21, 2016).

Because a school district carried its burden to show that it had provided a special education student with "free and appropriate education" (FAPE) for the year in question, no obligation to provide a compensatory education arose. K.S. ex rel. K.S. v. Hackensack Bd. of Educ., OAL DKT. NO. EDS 03045-14, 2016 N.J. AGEN LEXIS 16, Final Decision (January 12, 2016).

Parents of a child who had Soto syndrome prevailed on claims that a school district did not provide the child with a free, appropriate public education (FAPE) within the meaning of governing regulations inasmuch as the district failed to make significant changes to the child's individualized education plan after his scores drastically dropped, with the result that the child's parents had to obtain and pay for tutoring for the child to remediate his significant learning gaps. Moreover, on these facts, the parents established that their unilateral placement of the child was appropriate and provided him with an appropriate education. Because the parents established the appropriateness of that placement, they were entitled to reimbursement for the costs of that placement. Finally, though an ALJ had authority to decide certain of the issues raised herein, it did not have the authority to grant claims for fees incurred for attorneys or expert witnesses. W.K. and C.K. ex rel M.K. v. Matawan-Aberdeen Reg'l Bd. of Educ., OAL DKT. NO. EDS 05168-13, 2015 N.J. AGEN LEXIS 684, Final Order (December 4, 2015).

School district had a settled legal right to conduct formal testing and assessment of an eight year old student who was classified as autistic and had not been formally evaluated since he was three years old but was receiving special services. Insofar as the evaluation was a necessary prerequisite to a determination of the student's educational needs, the district was entitled to undertake the assessments notwithstanding the lack of parental consent. Washington Twp. Bd. of Educ. v. M.H. and P.H. ex rel. A.H., OAL DKT. NO. EDS 16901-14, 2015 N.J. AGEN LEXIS 817, Final Decision (November 30, 2015).

Board of education won an order requiring the parents of an 8 year old student with disabilities to allow the Board to conduct and complete a neuropsychological assessment, including neurological, psychological