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".
Amended by R.2006 d.315, effective September 5, 2006.
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).
In (a), substituted "September 5, 2006" for "October 6, 2003"; in (b)1, substituted ";" for "and, in furtherance thereof, to:" at the end; recodified former (b)1i through (b)1iii as (b)2 through (b)4; recodified former (b)2 through (b)6 as (b)5 through (b)9; in the introductory paragraph of (c), inserted "education"; in (d)2, inserted "and qualified"; added (i).

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).

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).

District's proposed program would have provided an 11-year-old communication impaired student with a FAPE in the least restrictive environment where it included: a full day program at the middle school in the student's home district; academic instruction by a special education teacher in a small group of two to six students; mainstreaming for cycle classes; an aide or peer buddy for some non-structured parts of the day; speech and language therapy; a social skills component, consisting of a group setting; and individual counseling. Therefore, the parents were not entitled to reimbursement for the time that the student spent at a private academy of their choosing. C.T. ex rel. R.T. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 04682-10 and EDS 07825-10, 2011 N.J. AGEN LEXIS 18, Final Decision (January 14, 2011).

While the district made a good-faith effort to mainstream a student with severe dyslexia and ADHD by keeping her in mainstream classes except for the two areas in which her learning disabilities were the most pronounced, the district did little more to help her keep pace with mainstream students beyond books on tape. Given the severity of the student's disability, she was unable to make meaningful progress and the district's program was not the least restrictive environment appropriate for her. J.M. ex rel. M.M. v. Morris School District Bd. of Educ., OAL Dkt. No. EDS 03830-10, 2010 N.J. AGEN LEXIS 625, Final Decision (November 24, 2010).

Ten-hour-per-week outreach program no longer conferred meaningful benefit to a 14-year-old autistic student because it was merely a continuation of the academic regular-day program, which was already conferring meaningful benefit. It lacked goals and objectives that differed from the regular-day academic program; as such, the district did not deny the student of a FAPE by proposing an elimination of the program in exchange for functional training or coaching in the home for the parents. S.N. ex rel. I.N. v. North Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 05864-09, 2010 N.J. AGEN LEXIS 555, Final Decision (October 7, 2010).

IEP rejected by the parents provided an 11-year-old emotionally disturbed student with the opportunity for significant learning and meaningful educational benefit consistent with her abilities and educational needs, including: a full day program at the middle school; placement in the school's resource center for Reading, Language Arts and Social Studies; replacement mathematics, supplemental reading and in-class support science; and weekly counseling. The parents' unilateral placement of the student in an alternate program could not be reimbursed where the district had offered a FAPE. R.S. ex rel. E.S. v. Montgomery Twp. Bd. of Educ., OAL Dkt. No. EDS 14008-09, 2010 N.J. AGEN LEXIS 322, Final Decision (July 19, 2010).

Although the district was making admirable attempts to accommodate a fourth-grader who was deemed "emotionally disturbed" by placing him in a Behavioral Disabilities Classroom and allowing him to excel academically, the district was not meeting the student's needs because there was no opportunity for the cognitively astute student to learn much-needed social skills from his peers; the priority for the student's programming should have been the direct teaching of social reasoning and social problem-solving skills needed to interact in a group, which the district failed to provide. An out-of-district academy was organized to provide the student with an immersion of social skills taught throughout the school day while giving him the opportunity to practice those skills with support from a skilled staff person in small-group, controlled contexts and would meet his needs in the areas of hyperactivity, impulsivity, difficulty with social boundaries, perspective-taking, ability to pick up on social cues, difficulty with homework completion, difficulty maintaining attention to task, difficulty following routines, difficulty following directions, exhibiting inappropriate attention-seeking behaviors, handwriting difficulties, and difficulty with written expression, and counseling for mood problems. P.B. ex rel. T.B. v. Wanaque Bd. of Educ., OAL Dkt. No. EDS 09260-09, 2010 N.J. AGEN LEXIS 303, Final Decision (June 16, 2010).

Eight-year-old severely emotionally impaired student was entitled to an extended school year program in order to prevent regression and, while the district had offered a summer program, it was only a two-week, three-hour a day, four-day each week program of occupational, speech, and language therapies, whereas the student was in need of a summer camp known for its therapeutic behavior-modification program with the focus on the student's anger issues and self-control issues. S.C. ex rel. M.C. v. North Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 5449-09, 2009 N.J. AGEN LEXIS 452, Final Decision (June 9, 2009).

Parents of a nine-year-old autistic child could not compel the district to provide a certain play-based education modality during the school year and during the extended school year summer program because the district's use of eclectic modalities was sufficient; the student was making progress academically, socially and behaviorally through flexible instruction and his communication skills, social skills and behavior also progressed. K.B. ex rel. J.B. v. Cherry Hill Twp Bd. of Educ., OAL Dkt. No. EDS 8663-08, 2009 N.J. AGEN LEXIS 309, Final Decision (May 29, 2009).

School district remained responsible for the acts or omissions of an out-of-placement program that denied the parents' expert access to the facility in order to judge its appropriateness for their three-year-old autistic child; the district's obligation to provide the child with a free appropriate public education and related services continued, even in the event of an out-of-district placement. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

Parent of a 21-year-old multiply disabled student was not entitled to compensatory education for reading and handwriting where the district provided the student with a FAPE; the IEPs were designed to provide the student with an additional two years of services to assist him with vocational skills and, although he may not have progressed in reading

and handwriting during these two years, the district did have a program to provide a meaningful educational benefit to him. T.M. ex rel. M.M v. Gloucester City Bd. of Educ., OAL Dkt. No. EDS 8789-08, 2009 N.J. AGEN LEXIS 234, Final Decision (April 15, 2009).

Eighteen-year-old multiply disabled student who was expelled from school following his conviction on criminal charges unrelated to his disability was not denied a FAPE because the district offered the student home instruction even after his expulsion; the only obstacle preventing the student's home instruction was his own obstinacy and refusal to participate in home instruction. M.A. ex rel. v. P.A. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 12339-08, 2009 N.J. AGEN LEXIS 235, Final Decision (April 7, 2009).

School district's failure to include home programming as a related service for a 15-year-old child diagnosed with autistic spectrum disorder violated the statutory mandate that the child receive a free and appropriate public education since in order to function as an independent and productive member of society, the child had to achieve self-control over his maladaptive behaviors. Consequently, the district was ordered to fully reimburse the child's parents for all expenses of the home program and behavioral consultation services that they had incurred for the two past extended school years. C.R. ex rel. T.R. v. New Milford Bd. of Educ., OAL Dkt. No. EDS 11434-07, 2008 N.J. AGEN LEXIS 967, Final Decision (October 28, 2008).

Notwithstanding parents' contention that in order to receive a free appropriate public education, their 13-year-old son needed a form of therapy to treat his ocular motor dysfunction, convergence insufficiency, visual/depth perception deficits, and binocular instability, board of education was providing free appropriate public education without the requested therapy. His IEP was individually designed to meet his unique educational needs, he had received proper occupational therapy with respect to his visual difficulties, and he was achieving passing grades, and advancing from grade to grade, with respect to the quantum of educational benefit. N.S. ex rel. D.S. v. Hawthorne Bd. of Educ., OAL Dkt. No. EDS 9162-08, 2008 N.J. AGEN LEXIS 853, Final Decision (October 10, 2008).

Sole authority to hire and terminate specific staff members to provide services as required by an IEP rests with school district, provided the school district complies with statutory and regulatory mandates and principles; ALJ has no authority to dictate to school district whom it may hire or terminate for that is not an issue of whether an IEP, as presented by school district, is in compliance with the Individuals with Disabilities Education Act. R.S. ex rel. A.S. v. Highland Park Bd. of Educ., OAL Dkt. No. EDS 4793-08, 2008 N.J. AGEN LEXIS 823, Final Decision (August 22, 2008).

Eighth grader with a specific learning disability was not entitled to special education services because she was well adjusted and overall performing at grade level and thus not "in need" of services within the meaning of the IDEA. J.S. and M.S. ex rel. R.S. v. Bound Brook Borough Bd. of Educ., OAL Dkt. No. EDS 2021-08, 2008 N.J. AGEN LEXIS 347, Final Decision (May 15, 2008).

School district's requirement that a diabetic high school student travel to the nurse's office to have his blood glucose levels monitored was discriminatory; without the flexibility to test on-the-spot, the student was experiencing a discrimination against time when he was away from the classroom, when he jeopardized his health and safety by walking to the nurse's office while already experiencing a low blood sugar, and by being deprived of in-class training to become self-sufficient and independent. G.K. and H.K. ex rel. C.K. v. Bloomfield Twp. Bd. of Educ., OAL DKT. NO. EDS 10165-06, 2008 N.J. AGEN LEXIS 117, Final Decision (February 4, 2008).

Disabled 16-year-old student was entitled to compensatory education for the equivalent of two and one-half academic years, in addition to the summer program recommended by an expert witness, as well as the immediate implementation of specific recommendations made by the expert for services to the student, where the evidence demonstrated that the student did not receive a FAPE; the student's reading disability had not been properly addressed by the district, and the student's IEP failed to comply with the requirements of IDEA. K.R. and J.R. ex rel. N.R. v. Vineland City Bd. of Educ., OAL DKT. NO. EDS 2321-07, 2008 N.J. AGEN LEXIS 22, Final Decision (January 22, 2008).

Parent of an emotionally disturbed high school student failed to demonstrate that the school district's proposed out-of-district placement would deny a FAPE to the student; in fact, the out-of-district placement was necessary to deal with the student's disciplinary issues, which included bumping a classroom assistant and yelling at her, ignoring numerous directives from teachers, pointing an Exacto knife at a teacher, violence against other students, and ignoring requests of his "shadow aide" and using profanity against him. K.P. ex rel. B.P. v. Black Horse Pike Reg'l Bd. of Educ., OAL DKT. EDS 6365-07, 2007 N.J. AGEN LEXIS 777, Final Decision (October 19, 2007).

Child who was incapable of receiving any meaningful education within her regular school environment or any other physical site placement due to the onset of her disabling medical conditions was entitled to approval of an on-line accredited high school not otherwise included as an approved placement for classified students under listings maintained by the New Jersey Department of Education. S.D. ex rel. C.D. v. Lenape Reg'l Bd. of Educ., OAL DKT. EDS 6752-07, 2007 N.J. AGEN LEXIS 657, Final Decision (September 20, 2007).

Board of Educ. of Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982), provides a two-part test to determine whether or not a child has been given a FAPE, which is mandated by the IDEA: (1) a determination has to be made whether or not procedural safeguards required by the IDEA have been complied with, and (2) a determination has to be made whether or not the IEP proposed by the local educational authority is appropriate and reasonably calculated to enable the child to receive educational benefits. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. The least restrictive appropriate placement was at the EPIC school, in conjunction with the Ridgewood preschool with an EPIC shadow, and parents were entitled to reimbursement for their unilateral placement. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Mere fact that parents disagreed with what occurred at an IEP meeting and with the IEP itself did not constitute a lack of cooperation but instead constituted the input of concerned parents, which the school district failed to appropriately and adequately address. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Child's entitlement to special education did not depend upon the vigilance of the parents because parents and guardians were not always sophisticated enough to understand a child's problems or rights, nor did they always have the resources, whether monetary, emotional, or educational, to pursue the most appropriate educational placement for their children. Rather, it was the responsibility of the school district and its staff who oversaw the individual child's education to determine his or her needs and placement, and to adjust to changes in the child and deficiencies in the educational services provided; as such, a breakdown in communication between a disabled student's mother and the district did not absolve the district of its duty to provide appropriate educational services to the student. M.S. ex rel. K.E. v. Camden City Bd. of Educ., OAL DKT. EDS 698-07, 2007 N.J. AGEN LEXIS 473, Final Decision (August 3, 2007).