

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 20 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; and

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.)

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 or the provision of a free, appropriate public education. For students above the age of 21, any disputes regarding the provision of programs and services to these students 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, 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:

1. The Office of Special Education Programs shall acknowledge receipt of the request and provide information to the parent regarding free and low cost legal services and the availability of mediation;

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

3. Within seven calendar days of the written request, a representative from the Office of Special Education Programs shall conduct a transmittal conference.

i. The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses;

ii. The parties may agree to mediation at the transmittal conference according to the following:

(1) The petitioner withdraws the request for a due process hearing;

(2) The mediator is available to conduct the mediation;

(3) If no agreement is reached as a result of mediation, the petitioner may resubmit the request for the due process hearing, so that the transmittal conference can continue;

(4) If the mediator is unable to conduct the mediation at the transmittal conference, a mediation conference will be scheduled within 20 calendar days of receipt of the original request for the due process hearing;

iii. The district board of education shall ensure that the chief school administrator or designee with the authority of the chief school administrator participates in the transmittal conference;

iv. The transmittal conference shall be scheduled at a time and place reasonably convenient to the parties. At the discretion of the representative from the Office of Special Education Programs, the conference may be conducted by telephone;

v. The transmittal conference may result in either withdrawal or transmittal to the Office of Administrative Law according to N.J.A.C. 1:6A; and

vi. If the conference results in transmittal to the Office of Administrative Law:

(1) The representative from the Office of Special Education Programs will prepare a written document of the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be forwarded immediately to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties; and

(2) The representative from the Office of Special Education Programs shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by an administrative law judge at the request of either party. If the parent or adult student does not participate in the conference and is not available to schedule a hearing date, or the parties cannot agree to hearing dates, 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 a hearing unless a specific adjournment is granted 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) Either party may apply in writing for emergency relief as a part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A-12.1. 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.

(h) Prior to transmittal of a request for a due process hearing to the Office of Administrative Law, 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, 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.

i. Emergency relief may be granted if the administrative law judge determines from the proofs that:

(1) The applicant has a reasonable probability of ultimately prevailing on the merits;

(2) The student's education program will be terminated or interrupted to the extent that irreparable harm will occur; and

(3) The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

2. Emergency relief may be requested if school personnel maintain that it is dangerous for the student with a disability to be in the current placement;

i. The administrative law judge may order a change in the placement of a student with a disability to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2) as amended and supplemented. (See chapter Appendix.)

3. Emergency relief may be requested by the parent or adult student if he or she disagrees with a manifestation determination related to disciplinary action or with a decision related to placement in an interim alternative educational setting by school officials for behavior involving drugs or weapons according to 20 U.S.C. § 1415(k)(6)(A) as amended and supplemented. (See chapter Appendix.)

(i) 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 or adult student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education. On receipt of this request, implementation of the decision shall be assured.

(j) Pending the outcome of a 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 (h) above or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented. (See chapter Appendix.)

(k) 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.
Sec: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).
Rewrote (d)3ii.

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.

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 without the provision of educational services 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.

(b) 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 Appendix.)

Case Notes

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

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 or an approved private school for the disabled.

3. By the year 2000, alternate assessments shall be administered by the Department of Education so that all students are included in the Statewide assessment system.

4. A student with a disability may participate in the Special Review Assessment for the High School Proficiency Test after one administration of the High School Proficiency Test when the student fails one or more sections of the test and when the IEP team determines that the student requires an alternate format to demonstrate the knowledge and skills measured by the High School Proficiency Test.

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".

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. 6:8-7, 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) 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.



(c) 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.

(d) 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.

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.

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; and

iv. Home instruction.

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. 6:31-1.4 and compensatory education according to N.J.A.C. 6:8-1 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 contract-

ing 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.

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. 6:24. 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.

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 Participation of students with disabilities enrolled in nonpublic schools by their parents

(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 by their parents.

(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 nonpublic 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.

Case Notes

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 v. 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. Bernardsville 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 individualized education programs and 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.

(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 provide 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.

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. 6:20-2A.

(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.

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).

(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. 6:24.

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.

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. 6:20 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.

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 each school year.

(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.

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 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 20 U.S.C. § 1415(k) as amended and supplemented. (See chapter Appendix.)

(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.

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:14-4.8 are met.

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. 6:20-4.1(e).

(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. 6:78-1.3.

(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. 6:20.

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. 6:20 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.

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 four 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. 6:24.

**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. 6:9 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 or adult student 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.

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 and the approved special education plan.

(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. 6:24.

(i) The Department of Education shall maintain monitoring records for a period of at least five years.

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 of substance 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; and

2. The facts on which the statement is based.

(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 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) A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to all parties.

1. Upon receipt of the complaint investigation report, either party may appeal the findings and/or recommendations by filing a petition with the United States Secretary of Education in accordance with 34 C.F.R. § 300.661(d).

(e) If the education agency is found to be in noncompliance, a corrective action plan shall be developed and submitted to the Department of Education through the county office of education.

(f) The corrective action plan shall include, but not be limited to:

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed to obtain the objectives; and

2. The dates by which the noncompliance will be corrected.

(g) The county office of education shall review the corrective action plan and notify the State Director of the Office of Special Education Programs and the education agency if it is acceptable.

(h) The county office of education shall review the implementation of the corrective action and notify the State Director of the Office of Special Education programs when the implementation is completed.

(i) When a corrective action plan is not submitted, found unacceptable or implemented, the county office of education shall notify the agency of the actions the Department of Education intends to take.

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: