

plan shall serve as an accompaniment to the student's Individualized Healthcare Plan.

"Automated external defibrillator (AED)" means a medical device heart monitor and defibrillator that is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed and upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart, pursuant to N.J.S.A. 18A:40-41a.

"Case management" means advocacy for and coordination of student services, including, but not limited to, counseling, health services, referrals to community-based agencies, and monitoring of academic progress.

"Certified school nurse" means a person who holds a current license as a registered professional nurse from the State Board of Nursing and an educational services certificate, school nurse or school nurse/non-instructional endorsement from the Department of Education pursuant to N.J.A.C. 6A:9B-12.3 and 12.4.

"Code of student conduct" means standards, policies, and procedures established by district boards of education for positive student development and student behavioral expectations on school grounds, including on school buses or at school-sponsored functions, and, as appropriate, conduct away from school grounds, in accordance with N.J.A.C. 6A:16-7.1.

"Do Not Resuscitate order" or "DNR order" means a written directive signed by the parent or guardian of a student who, after consultation with the pediatrician and other advisors, declines emergency administration of cardiopulmonary resuscitation (CPR) and AED to the student.

"Electronic communication" means a communication transmitted by means of an electronic device, including, but not limited to, a telephone, cellular phone, computer, or remotely activating paging device.

"Evaluation" means procedures used by a certified or licensed professional to make a positive determination of a student's need for programs and services that extend beyond the general school program by virtue of learning, behavior, or health difficulties of the student or the student's family.

"Expulsion" means the discontinuance of educational services or the discontinuance of payment of educational services for a student.

"Firearms" means items enumerated in N.J.S.A. 2C:39-1(f) and 18 U.S.C. § 921.

"General education" means the educational programs and services provided to students other than students determined to be eligible for special education and related services pursuant to N.J.A.C. 6A:14-3.5 and 3.6.

"Guided-learning experiences" mean structured learning tasks that are assigned to the student to perform without the teacher being present, aligned to the school district curriculum and State Core Curriculum Content Standards, and designed to help the student to learn new or reinforce prior knowledge, practice skills, integrate knowledge and skills, or demonstrate mastery.

"Harassment, intimidation, or bullying" means, as set forth in N.J.S.A. 18A:37-14, any gesture, any written, verbal, or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in N.J.S.A. 18A:37-14 and 15.3, that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property or placing a student in reasonable fear of physical or emotional harm to his or her person or damage to his or her property; has the effect of insulting or demeaning any student or group of students; or creates a hostile educational environment for a student by interfering with the student's education or by severely or pervasively causing physical or emotional harm to the student.

"Home instruction" means the provision of one-to-one, small-group, or online instruction in the student's place of residence or other appropriate setting due to a health condition, need for treatment, court order, or exclusion from general education for conduct or safety reasons.

"Individualized emergency healthcare plan" means a plan written by the certified school nurse that specifies the delivery of healthcare accommodations and services needed by a student in the event of an emergency.

"Individualized Program Plan" (IPP) means a written plan developed for a general education student who has been assigned by the district board of education to home instruction, an alternative education program or who is being provided other educational services either in or out of school that are comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25. The IPP sets forth the student's present level of performance, measurable goals and short-term objectives or benchmarks that encompass behavioral and social competency as well as curriculum, and individually designed instructional activities to achieve the goals and objectives.

"Informal hearing" means a discussion between a school administrator and a student regarding the student's alleged misconduct, pursuant to N.J.A.C. 6A:16-7.2, Short-term sus-

pensions, in which the student is informed of his or her alleged violation of the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, Code of student conduct, and the basis for the accusation. During the informal hearing, the student is given the opportunity to explain his or her version of the facts and events regarding the alleged violation.

"Long-term suspension" means removal of a student for more than 10 consecutive school days from the general education program, or the special education program when the appropriate procedures set forth in N.J.A.C. 6A:14-2.8 have been followed, but not the cessation of the student's educational services.

"Medical home" means a health care provider, including NJ FamilyCare providers as defined by N.J.S.A. 30:4J-12 and the provider's practice site chosen by the student's parent or guardian for the provision of health care.

"Medical staff" means employees of the district board of education serving as school physician, certified school nurse, noncertified nurse, advanced practice nurse, registered nurse, or licensed practical nurse.

"Medication" means a drug approved by the Federal Food and Drug Administration for preventing, caring for, and assisting in the cure of disease and injury that has a written order from a physician licensed in medicine, dentistry or osteopathy, or from an advanced practice nurse. Medication does not include herbal remedies.

"NJ FamilyCare" means the Federal- and State-funded health insurance program created to help qualified New Jersey residents of any age access affordable health insurance.

"Noncertified nurse" means a person who holds a current license as a professional nurse from the State Board of Nursing and is employed by a district board of education or nonpublic school, and who is not certified as a school nurse by the Department of Education.

"Nursing services plan" means a plan that describes in detail the nursing services to be provided throughout the school district based on the needs of its students, potential emergency situations, basic nursing services requirements, and the assignment of medical staff to provide the services.

"Parent" means the natural parent(s), adoptive parent(s), legal guardian(s), foster parent(s), or parent surrogate(s) of a student. When parents are separated or divorced, "parent" means the person or agency who has legal custody of the student, as well as the natural or adoptive parent(s) of the student, provided parental rights have not been terminated by a court of appropriate jurisdiction.

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 6A:32 to act on behalf of a student whose

parent(s) is not available to assure the student's education rights.

"Physical examination" means the examination of the body by a professional licensed to practice medicine or osteopathy, or by an advanced practice nurse, or physician assistant. The term includes specific procedures required by statute as stated in N.J.A.C. 6A:16-2.2.

"Physician assistant" means a health care professional licensed to practice medicine with physician supervision.

"Referral for evaluation" means programs and services suggested to a student or his or her family to make a positive determination regarding a student's need for services that extend beyond the general school program.

"Referral for treatment" means programs and services suggested to a student or to his or her family:

1. To help implement the recommendations resulting from an evaluation pursuant to N.J.A.C. 6A:16-1.3 and 4.1(c)5 and 6;
2. In response to a positive alcohol or other drug test result pursuant to N.J.A.C. 6A:16-4.4; or
3. In response to the family's request for assistance with a learning, behavior, or health difficulty pursuant to N.J.A.C. 6A:16-4.1(c)7 and 8.

"School grounds" means and includes land, portions of land, structures, buildings, and vehicles, when used for the provision of academic or extracurricular programs sponsored by the school district or community provider. School grounds also includes school buses, school-sponsored functions, structures that support the buildings, such as school district wastewater treatment facilities; generating facilities; and other central service facilities including, but not limited to, kitchens and maintenance shops. School grounds also includes other facilities as defined in N.J.A.C. 6A:26-1.2, playgrounds, and recreational places owned by municipalities, private entities or other individuals during times when the school district has exclusive use of a portion of the land.

"School-sponsored function" means any activity, event or program occurring on or off school grounds, whether during or outside of regular school hours, that is organized and/or supported by the school.

"Short-term suspension" means removal of a student for one but not more than 10 consecutive school days from the general education program or the special education program, in accordance with N.J.A.C. 6A:14-2.8, but not the cessation of the student's educational services.

"Standing orders" means directives and protocols written by the school physician to carry out medical procedures for all students and staff.

“Student health record” means documented information relevant to the health of the student to manage the routine and emergency care of the student while school is in session.

“Substitute school nurse” means a person who holds a current license from the State Board of Nursing as a registered professional nurse and who has been issued a certificate to serve as a substitute for a certified school nurse in accordance with N.J.A.C. 6A:9B-6.5(i).

“Truancy” means 10 or more cumulative unexcused student absences, as determined by the district board of education pursuant to N.J.A.C. 6A:16-7.6(a)3 and the definition of a school day, pursuant to N.J.A.C. 6A:32-8.3.

“Universal precautions” means a set of procedures designed to prevent transmission of human immunodeficiency virus (HIV), hepatitis B virus, and other bloodborne pathogens.

“Weapon” means items enumerated in N.J.S.A. 2C:39-1(r), except a firearm as defined by N.J.S.A. 2C:39-1(f).

“Written order” means a directive and protocol written by the student’s medical home to address a healthcare need or provide a medical service for a specific student.

Amended by R.2001 d.309, effective September 4, 2001.
See: 33 N.J.R. 1253(a), 33 N.J.R. 3032(b).

In “School complex”, substituted “one building or a group of” for “two or more” preceding “buildings identified”.

Amended by R.2002 d.396, effective December 16, 2002.

See: 34 N.J.R. 3157(a), 34 N.J.R. 4433(a).

Added “School grounds”.

Amended by R.2003 d.175, effective May 5, 2003.

See: 34 N.J.R. 4336(a), 35 N.J.R. 1893(a).

Rewrote “School grounds”.

Amended by R.2005 d.297, effective September 6, 2005.

See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

Added the definitions “Code of student conduct”, “Commissioner”, “Expulsion”, “General education”, “Harassment, intimidation or bullying”, “Long-term suspension”, “Short-term suspension”, and “Truancy”; rewrote definitions “Individual Program Plan”, and “Suspension”; amended N.J.A.C. cite in “Alternative education program,” and “Substitute school nurse;” amended “School grounds;” deleted “Removal.”

Administrative correction.

See: 38 N.J.R. 2797(a).

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Deleted definition “AIDS”; rewrote definitions “Alternative education program”, “Certified school nurse”, “Home instruction”, “School Complex” and “Standing orders”; added definitions “Asthma Action Plan”, “Case management”, “Guided learning experiences”, “HIV”, “Individualized emergency healthcare plan”, “Individualized healthcare plan”, “Informal hearing”, “Nursing Services Plan”, “School-sponsored function”, “Student health record” and “Written order”; substituted definition “Automated external defibrillator” for definition “Automatic external defibrillator”; in definition “Do Not Resuscitate order”, substituted “automated” for “automatic”; in definitions “Long-term suspension” and “Short-term suspension”, inserted “consecutive”; in definition “Medical staff”, substituted “school nurse, noncertified nurse” for “or noncertified school nurse”; substituted definition “Noncertified nurse” for definition “Noncertified school nurse”; in definitions “Parent surrogate(s)” and “Truancy”, updated N.J.A.C. references; and in definition “Physical examination”, deleted “, except N.J.A.C. 6A:16-2.2(g)” from the end.

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

Added definitions “Abused children” and “Intern”; and substituted definition “Firearms” for definition “Firearm”.

Amended by R.2007 d.383, effective December 17, 2007.

See: 39 N.J.R. 2579(a), 39 N.J.R. 5218(a).

Added definition “Random selection”; and rewrote definition “Referral for treatment”.

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Administrative change.

See: 46 N.J.R. 1743(a).

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

Added definitions “Automated external defibrillator (AED)”, “NJ FamilyCare”, and “Physician assistant”; in definition “Code of student conduct”, updated the N.J.A.C. reference; in definition “Do Not Resuscitate order” substituted “AED” for “automated external defibrillator (AED)”; in definition “Harassment, intimidation, or bullying” inserted “, as set forth in N.J.S.A. 18A:37-14,” and deleted “in accordance with N.J.S.A. 18A:37-14,” following “incidents,”; in definition “Physical examination” inserted “, or physician assistant”; and in definition “Referral for treatment”, in 1, deleted a comma following “evaluation” and deleted “or” from the end, in 2, deleted a comma following “result”, and in 3, deleted a comma following “difficulty”.

6A:16-1.4 (Reserved)

Amended by R.2005 d.297, effective September 6, 2005.

See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

Rewrote (a); in (c), substituted “, entitled” for “titled” following “Part 98”.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was “District policies and procedures”. Rewrote the section.

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (b)4, deleted “and” from the end; in (b)5, substituted “; and” for the period at the end; and added (b)6.

Repealed by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was “School district policies and procedures”.

6A:16-1.5 (Reserved)

Recodified to N.J.A.C. 6A:16-2.4 by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was “Student health records”.

SUBCHAPTER 2. GENERAL PROVISIONS FOR SCHOOL HEALTH SERVICES

6A:16-2.1 Health services policy and procedural requirements

(a) Each district board of education shall develop and adopt the following written policies, procedures, and mechanisms for the provision of health, safety, and medical emergency services, and shall ensure staff are informed as appropriate:

1. The review of immunization records for completeness pursuant to N.J.A.C. 8:57-4.1 through 4.20;

2. The administration of medication to students in the school setting by the following authorized individuals:

- i. The school physician;
 - ii. A certified school nurse or noncertified nurse;
 - iii. A substitute school nurse employed by the school district;
 - iv. The student's parent;
 - v. A student approved to self-administer medication pursuant to N.J.A.C. 6A:16-2.1(a)5iii and 9 and N.J.S.A. 18A:40-12.3 and 12.4;
 - vi. Other school employees who volunteer to be trained and designated by the certified school nurse to administer epinephrine in an emergency pursuant to N.J.S.A. 18A:40-12.5 and 12.6; and
 - vii. Other employees who volunteer to be designated as a delegate and trained to administer glucagon pursuant to N.J.S.A. 18A:40-12.14.
3. The review of DNR orders received from the student's parent or medical home;
 4. The provision of health services in emergency situations, including:
 - i. The emergency administration of epinephrine via epinephrine auto-injector pursuant to N.J.S.A. 18A:40-12.5;
 - ii. The emergency administration of glucagon pursuant to N.J.S.A. 18A:40-12.14;
 - iii. The care of any student who becomes injured or ill while at school or participating in school-sponsored functions;
 - iv. The transportation and supervision of any student determined to be in need of immediate care;
 - v. The notification to parents of any student determined to be in need of immediate medical care; and
 - vi. The establishment and implementation of an emergency action plan for responding to a sudden cardiac event, including the use of an AED, pursuant to N.J.S.A. 18A:40-41b;
 5. The treatment of asthma in the school setting, which shall include, but not be limited to, the following requirements:
 - i. Each school nurse shall be authorized to administer asthma medication through use of a nebulizer pursuant to N.J.S.A. 18A:40-12.8(a);
 - ii. Each school nurse shall receive training in airway management and in the use of nebulizers and inhalers consistent with nationally recognized standards, including, but not limited to, those of the National Institutes of Health and the American Academy of Allergy, Asthma and Immunology, pursuant to N.J.S.A. 18A:40-12.8(a); and

- iii. Each student authorized to use asthma medication pursuant to N.J.S.A. 18A:40-12.3 or a nebulizer shall have an asthma treatment plan prepared by the student's medical home and submitted to the certified school nurse. The treatment plan shall identify, at a minimum, asthma triggers and shall be included in the individualized healthcare plan and individualized emergency healthcare plan, pursuant to N.J.A.C. 6A:16-2.3(b), for meeting the medical needs of the student while attending school or a school-sponsored function;

6. Administration of student medical examinations, pursuant to N.J.S.A. 18A:40-4, N.J.S.A. 18A:35-4.8, and N.J.A.C. 6A:16-2.2;

7. Utilization of sanitation and hygiene when handling blood and bodily fluids pursuant to N.J.A.C. 12:100-4.2, Safety and Health Standards for Public Employees, and in compliance with 29 CFR 1910.1030, Public Employees Occupational Safety and Health Program (PEOSH) Blood-borne Pathogens Standards;

8. Provision of nursing services to nonpublic schools located in the school district as required by N.J.S.A. 18A:40-23 et seq. and N.J.A.C. 6A:16-2.5;

9. Self-administration of medication by a student for asthma or other potentially life-threatening illness or life-threatening allergic reaction pursuant to N.J.S.A. 18A:40-12.3, 12.5, and 12.6, and the self-management and care of a student's diabetes as needed pursuant to N.J.S.A. 18A:40-12.15;

10. Development of an individualized healthcare plan and individualized emergency healthcare plan for students with chronic medical conditions, including diabetes, asthma, and life-threatening allergies, requiring special health services in accordance with N.J.S.A. 18A:40-12.11.c, 12.12, 12.13, and 12.15; and N.J.A.C. 6A:16-2.3(b)3xii; and

11. Management of food allergies in the school setting and the emergency administration of epinephrine to students for anaphylaxis pursuant to N.J.S.A. 18A:40-12.6a through 12.6d.

(b) Each district board of education shall annually adopt the school district's nursing services plan at a regular meeting.

Amended by R.2001 d.309, effective September 4, 2001.
See: 33 N.J.R. 1253(a), 33 N.J.R. 3032(b).

In (f), rewrote the introductory paragraph, substituted "one building or a group of" for "two or more" in 1, added a new 2, recodified former 2 as 3 and rewrote the paragraph.

Amended by R.2001 d.472, effective December 17, 2001.
See: 33 N.J.R. 2936(a), 33 N.J.R. 4330(a).

In (d), added 12.
Repeal and New Rule, R.2006 d.366, effective October 16, 2006.
See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Health services personnel".
Amended by R.2007 d.184, effective June 4, 2007.
See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (a)4ii, substituted "functions" for "activities".

Amended by R.2014 d.047, effective March 17, 2014.
See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Amended by R.2015 d.158, effective October 5, 2015.
See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

In (a)2vi and (a)2vii, inserted "who volunteer to be"; in (a)4i, substituted "epinephrine" for "Epi-pen"; in (a)4iv, deleted "and" from the end; in (a)4v, inserted "and"; and added (a)4vi.

Case Notes

School board did not violate N.J.S.A. 18A:40-3.3 by hiring a school health aide who did not hold a school nurse endorsement since no requirement existed that a school nurse be in a school building at all times during which a non-certified nurse was performing supplemental services to the certified school nurse. *Ramsey Teachers Ass'n v. Board of Educ. of Ramsey*, 382 N.J. Super. 241, 888 A.2d 499, 2006 N.J. Super. LEXIS 2 (App.Div. 2006).

6A:16-2.2 Required health services

(a) Each school district shall ensure immunization records are reviewed and updated annually pursuant to N.J.A.C. 8:57-4.1 through 4.24.

(b) Each school district shall ensure a principal or his or her designee does not knowingly admit or retain in the school building a student whose parent has not submitted acceptable evidence of the child's immunization, according to the schedule specified in N.J.A.C. 8:57-4, Immunization of Pupils in School.

(c) Each school district shall perform tuberculosis tests on students using methods required by and when specifically directed to do so by the New Jersey Department of Health based upon the incidence of tuberculosis or reactor rates in specific communities or population groups pursuant to N.J.S.A. 18A:40-16.

(d) Each school district shall immediately report by telephone to the health officer of the jurisdiction in which the school is located any communicable diseases identified as reportable pursuant to N.J.A.C. 8:57-1, whether confirmed or presumed.

(e) Each public and nonpublic school in the State shall have and maintain for the care of students at least one nebulizer in the office of the school nurse or a similar accessible location, pursuant to N.J.S.A. 18A:40-12.7.

(f) Each student medical examination shall be conducted at the medical home of the student. If a student does not have a medical home, the school district shall provide the examination at the school physician's office or other comparably equipped facility, pursuant to N.J.S.A. 18A:40-4.

(g) The findings of required examinations under (h)2 through 5 below shall include the following components:

1. Immunizations pursuant to N.J.A.C. 8:57-4.1 through 4.24;

2. Medical history, including allergies, past serious illnesses, injuries, operations, medications, and current health problems;

3. Health screenings including height, weight, hearing, blood pressure and vision; and

4. Physical examinations.

(h) Each school district shall ensure that students receive medical examinations in accordance with (f) above and:

1. Prior to participation on a school-sponsored inter-scholastic or intramural athletic team or squad for students enrolled in any grades six to 12;

i. The examination shall be conducted within 365 days prior to the first day of official practice in an athletic season and shall be conducted by a licensed physician, advanced practice nurse (APN), or physician assistant (PA).

ii. The physical examination shall be documented using the Preparticipation Physical Evaluation (PPE) form developed jointly by the American Academy of Family Physicians, American Academy of Pediatrics, American College of Sports Medicine, American Medical Society for Sports Medicine, American Orthopaedic Society for Sports Medicine, and American Osteopathic Academy of Sports Medicine and available at, <http://www.state.nj.us/education/students/safety/health/records/athleticphysicalsform.pdf>, in accordance with N.J.S.A. 18A:40-41.7.

(1) Prior to performing a preparticipation physical examination, the licensed physician, APN, or PA who performs the student-athlete's physical examination shall complete the Student-Athlete Cardiac Screening professional development module and shall sign the certification statement on the PPE form attesting to the completion, pursuant to N.J.S.A. 18A:40-41d.

(A) If the PPE form is submitted without the signed certification statement and the school district has confirmed that the licensed physician, APN, or PA from the medical home did not complete the module, the student-athlete's parent may obtain a physical examination from a physician who can certify completion of the module or request that the school physician provides the examination.

(2) The medical report shall indicate if a student is allowed or not allowed to participate in the required sports categories and shall be completed and signed by the original examining physician, APN, or PA.

(3) An incomplete form shall be returned to the student's medical home for completion unless the school nurse can provide documentation to the school physician that the missing information is available from screenings completed by the school nurse or physician within the prior 365 days.

iii. Each student whose medical examination was completed more than 90 days prior to the first day of official practice in an athletic season shall provide a

health history update questionnaire completed and signed by the student's parent or guardian. The completed health history update questionnaire shall include information as required by N.J.S.A. 18A:40-41.7.b.

iv. Each school district shall provide to the parent written notification signed by the school physician stating approval of the student's participation in athletics based upon the medical report or the reasons for the school physician's disapproval of the student's participation.

v. A district board of education, or a governing board or chief school administrator of a nonpublic school, shall not permit a student enrolled in grades six to 12 to participate on a school-sponsored interscholastic or intramural athletic team or squad unless the student submits a PPE form signed by the licensed physician, APN, or PA who performed the physical examination and, if applicable, a completed health history update questionnaire, pursuant to N.J.S.A. 18A:40-41.7.c;

vi. Each school district and nonpublic school shall distribute to a student-athlete and his or her parent or guardian the sudden cardiac arrest pamphlet developed by the Commissioner, in consultation with the Commissioner of Health, the American Heart Association, and the American Academy of Pediatrics, pursuant to N.J.S.A. 18A:40-41.

(1) A student-athlete and his or her parent or guardian annually shall sign the Commissioner-developed form that they received and reviewed the pamphlet, and shall return it, to the student's school pursuant to N.J.S.A. 18A:40-41.d.

(2) The Commissioner shall update the pamphlet, as necessary, pursuant to N.J.S.A. 18A:40-41.b.

(3) The Commissioner shall distribute the pamphlet, at no charge, to all school districts and nonpublic schools, pursuant to N.J.S.A. 18A:40-41.b.

2. Upon enrollment in school;

i. Each school district shall require parents to provide within 30 days of enrollment entry-examination documentation for each student.

ii. When a student transfers to another school, the sending school district shall ensure the entry-examination documentation is forwarded to the receiving school district pursuant to N.J.A.C. 6A:16-2.4(d).

iii. Students transferring into a New Jersey school from out-of-State or out-of-country may be allowed a 30-day period to obtain entry-examination documentation.

iv. Each school district shall notify parents through its website or other means about the importance of obtaining subsequent medical examinations of the

student at least once during each developmental stage: at early childhood (preschool through grade three), pre-adolescence (grade four through six), and adolescence (grade seven through 12);

3. When applying for working papers;

i. Pursuant to N.J.S.A. 34:2-21.7 and 21.8(3), the school district may provide for the administration of a medical examination for a student pursuing a certificate of employment.

ii. The school district shall not be held responsible for the costs for examinations at the student's medical home or other medical providers;

4. For the purposes of the comprehensive child study team evaluation pursuant to N.J.A.C. 6A:14-3.4; and

5. When a student is suspected of being under the influence of alcohol or controlled dangerous substances, pursuant to N.J.S.A. 18A:40A-12 and N.J.A.C. 6A:16-4.3.

i. If a student who is suspected of being under the influence of alcohol or controlled dangerous substances is reported to the certified school nurse, the certified school nurse shall monitor the student's vital signs and general health status for emergent issues and take appropriate action pending the medical examination pursuant to N.J.A.C. 6A:16-4.3.

ii. No school staff shall interfere with a student receiving a medical examination for suspicion of being under the influence of alcohol or controlled dangerous substances pursuant to N.J.A.C. 6A:16-4.3.

(i) Each public and nonpublic school shall have available and maintain an automated external defibrillator (AED), pursuant to N.J.S.A. 18A:40-41a.a(1) and (3), that is:

1. In an unlocked location on school property, with an appropriate identifying sign;

2. Accessible during the school day and any other time when a school-sponsored athletic event or team practice is taking place in which pupils of the school district or nonpublic school are participating; and

3. Within a reasonable proximity of the school athletic field or gymnasium, as applicable.

(j) The district board of education shall make accessible information regarding the NJ FamilyCare Program to students who are knowingly without medical coverage pursuant to N.J.S.A. 18A:40-34.

(k) Information concerning a student's HIV/AIDS status shall not be required as part of the medical examination or health history pursuant to N.J.S.A. 26:5C-1 et seq.

(l) Each district board of education shall ensure that students receive health screenings.

1. Screening for height, weight and blood pressure shall be conducted annually for each student in kindergarten through grade 12.
2. Screening for visual acuity shall be conducted biennially for students in kindergarten through grade 10.
3. Screening for auditory acuity shall be conducted annually for students in kindergarten through grade three and in grades seven and 11 pursuant to N.J.S.A. 18A:40-4.
4. Screening for scoliosis shall be conducted biennially for students between the ages of 10 and 18 pursuant to N.J.S.A. 18A:40-4.3.
5. Screenings shall be conducted by a school physician, school nurse, or other school personnel properly trained.
6. The school district shall notify the parent of any student suspected of deviation from the recommended standard.

Amended by R.2003 d.326, effective August 4, 2003.

See: 35 N.J.R. 1503(a), 35 N.J.R. 3610(a).

In (f), substituted "A biennial" for "An annual" in the introductory paragraph and added 1 and 2.

Amended by R.2003 d.358, effective September 2, 2003.

See: 35 N.J.R. 1801(a), 35 N.J.R. 4052(a).

Rewrote (b); in (h)5, added the second and third sentences.

Repeal and New Rule, R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Required student medical examinations".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (i), substituted "district board of education" for "school district".

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

In the introductory paragraph of (g), substituted "(h)2" for "(h)1"; rewrote (h); added new (i); and recodified former (i) through (k) as (j) through (l).

6A:16-2.3 Health services personnel

(a) The district board of education shall appoint a school physician pursuant to N.J.S.A. 18A:40-1.

1. The school district shall conduct a criminal history background check on any physician before entering into an agreement for delivery of services.
2. The school physician shall be currently licensed by the New Jersey Board of Medical Examiners in medicine or osteopathy and shall have a training and scope of practice that includes child and adolescent health and development.
3. A contract between a school district and a school physician appointed pursuant to N.J.S.A. 18A:40-1 shall include a statement of assurance that the school physician has completed the Student-Athlete Cardiac Screening professional development module developed pursuant to N.J.S.A. 18A:40-41d and has read the sudden cardiac arrest pamphlet developed pursuant to N.J.S.A. 18A:40-41.

4. The school physician shall provide, at a minimum, the following services:

- i. Consultation in the development and implementation of school district policies, procedures and mechanisms related to health, safety and medical emergencies pursuant to N.J.A.C. 6A:16-2.1(a);
- ii. Consultation to school district medical staff regarding the delivery of school health services, which includes special health care needs of technology-supported and medically fragile children, including students covered by 20 U.S.C. §§1400 et seq., Individuals with Disabilities Education Act;
- iii. Physical examinations conducted in the school physician's office or other comparably equipped facility for students who do not have a medical home;
- iv. Provision of written notification to the parent stating approval or disapproval of the student's participation in athletics based upon the medical report;
- v. Direction for professional duties of other medical staff;
- vi. Written standing orders that shall be reviewed and reissued before the beginning of each school year;
- vii. Establishment of standards of care for emergency situations and medically related care involving students and school staff;
- viii. Assistance to the certified school nurse or non-certified nurse in conducting health screenings of students and staff and assistance with the delivery of school health services;
- ix. Review, as needed, of reports and orders from a student's medical home regarding student health concerns;

x. Authorization of tuberculin testing for conditions outlined in N.J.A.C. 6A:16-2.2(c);

xi. Review, approval, or denial with reasons of a medical home determination of a student's anticipated confinement and resulting need for home instruction; and

xii. Consultation with the school district certified school nurse(s) to obtain input for the development of the school nursing services plan, pursuant to N.J.A.C. 6A:16-2.1(b).

(b) The district board of education shall employ a certified school nurse to provide nursing services while school is in session pursuant to N.J.S.A. 18A:40-1 and 3.3.

1. The certified school nurse shall work under the direction of the school physician and chief school administrator.

2. The certified school nurse shall receive training in airway management and in the use of nebulizers and inhal-

ers consistent with nationally recognized standards including, but not limited to, those of the National Institutes of Health and the American Academy of Allergy, Asthma and Immunology.

3. The role of the certified school nurse shall include, but not be limited to:

i. Carrying out written orders of the medical home and standing orders of the school physician;

ii. Conducting health screenings, which include height, weight, blood pressure, hearing, vision, and scoliosis pursuant to N.J.A.C. 6A:16-2.2; and monitoring vital signs and general health status for emergent issues for students suspected of being under the influence of alcohol and controlled dangerous substances pursuant to N.J.S.A. 18A:40-4 and 18A:40A-12;

iii. Maintaining student health records, pursuant to N.J.S.A. 18A:40-4 and N.J.A.C. 6A:16-2.4;

iv. Recommending to the school principal students who shall not be admitted to or retained in the school building based on a parent's failure to provide evidence of the child's immunization according to the schedules specified in N.J.A.C. 8:57-4;

v. Annually reviewing student immunization records to confirm with the medical home that the medical condition for the exemption from immunization continues to be applicable, pursuant to N.J.A.C. 8:57-4.3;

vi. Recommending to the school principal exclusion of students who show evidence of communicable disease, pursuant to N.J.S.A. 18A:40-7, 8, and 10;

vii. Directing and supervising the emergency administration of epinephrine and glucagon, and training school staff designated to serve as delegates, pursuant to N.J.S.A. 18A:40-12.6 and 12.14;

viii. Administering asthma medication through use of a nebulizer;

ix. Directing and supervising the health services activities of any school staff to whom the certified school nurse has delegated a nursing task;

x. Classroom instruction in areas related to health education pursuant to N.J.A.C. 6A:9B-12.3;

xi. Reviewing and summarizing available health and medical information regarding the student and transmitting a summary of relevant health and medical information to the child study team for the meeting pursuant to N.J.A.C. 6A:14-3.4(h);

xii. Writing and updating, at least annually, the individualized health care plans and the individualized emergency healthcare plans for students' medical needs, and instructing staff as appropriate;

xiii. Writing and updating, at least annually, any written healthcare provisions required under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a), for any student who requires them;

xiv. Assisting in the development of and implementing healthcare procedures for students in the event of an emergency;

xv. Instructing teachers on communicable disease and other health concerns, pursuant to N.J.S.A. 18A:40-3; and

xvi. Reviewing completed health history update questionnaires and sharing with the school athletic trainer for review, if applicable, pursuant to N.J.S.A. 18A:40-41.7; and

xvii. Providing other nursing services consistent with the nurse's educational services certification endorsement as a school nurse issued by the State Board of Examiners and current license approved by the State Board of Nursing.

(c) School districts may appoint a noncertified nurse under the supervision of a certified school nurse to supplement the services of a certified school nurse provided that:

1. The noncertified nurse shall be assigned to the same school building or complex as the certified school nurse pursuant to N.J.S.A. 18A:40-3.3.a.

2. A noncertified nurse is limited to providing services only as permitted under the noncertified nurse's license issued by the State Board of Nursing.

Amended by R.2002 d.134, effective May 6, 2002.

See: 34 N.J.R. 355(a), 34 N.J.R. 1667(a).

In (e), amended N.J.A.C. reference; added (g) and (h).

Repeal and New Rule, R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Required school health services".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (d)3viii, deleted "educational services certification endorsement as a school nurse issued by the State Board of Examiners and" following "nurse's".

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Administrative change.

See: 46 N.J.R. 1743(a).

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

Added new (a)3; recodified former (a)3 as (a)4; in (a)4iii, deleted "or whose parent has identified the school as the medical home for the purpose of the sports physical examination" following "home"; in (b)3ii, substituted "18A:40A-12" for "12"; added new (b)3xvi; and recodified former (b)3xvi as (b)3xvii.

Case Notes

School board did not violate N.J.S.A. 18A:40-3.3 by hiring a school health aide who did not hold a school nurse endorsement since no requirement existed that a school nurse be in a school building at all times during which a non-certified nurse was performing supplemental services to the certified school nurse. *Ramsey Teachers Ass'n v. Board of Educ. of Ramsey*, 382 N.J. Super. 241, 888 A.2d 499, 2006 N.J. Super. LEXIS 2 (App.Div. 2006).

Board of Education possessed the legal authority to implement a shared services agreement for certified school nurse services and, correspondingly, to eliminate the nursing position held by the petitioner through a reduction in force for reasons of economy because the requirement in N.J.A.C. 6A:16-2.3(b) that a board employ a certified school nurse to provide services while school was in session per N.J.S.A. 18A:40-1 was satisfied by the board's execution of such an agreement. *Prezioso v. Bd. of Ed. of the Polytech Career Acad., Hunterdon Cnty.*, OAL Dkt. No. EDU 7005-10, AGENCY Dkt. No. 112-6/10, 2013 N.J. AGEN LEXIS 426, Final Decision (April 26, 2013).

ALJ assessed credibility and found that a school nurse left used needles in a common supply closet, failed to maintain the medical waste disposal box, failed to properly treat injured students, and turned out the lights, locked her office door, and failed to answer the door to treat a student having an asthma attack, warranting revocation of her certificates. In re *Certificates of Kersaint*, OAL Dkt. No. EDE 80-06, 2007 N.J. AGEN LEXIS 63, Initial Decision (February 23, 2007), adopted, SBE No. 0506-145 (N.J. State Bd. of Examiners June 7, 2007), aff'd, SB No. 16-07, 2007 N.J. AGEN LEXIS 965 (N.J. State Bd. of Educ. October 17, 2007).

6A:16-2.4 Required student health records

(a) Each school district shall maintain for each student pursuant to N.J.A.C. 6A:32 a student health record that includes the following mandated records:

1. Findings of health histories, medical examinations and health screenings pursuant to N.J.A.C. 6A:16-2.2 and 4.3; and
2. Documentation of immunizations against communicable diseases or exemption from these immunizations pursuant to N.J.A.C. 8:57-4.1, 4.3, and 4.4.

(b) Any district board of education employee with knowledge of, or access to, the following health information shall comply with restrictions for sharing information as required by Federal and State statutes and regulations.

1. Information that identifies a student as having HIV infection or AIDS shall be shared only with prior written informed consent of the student age 12 or greater, or of the student's parent as required by N.J.S.A. 26:5C-1 et seq. and only for the purpose of determining an appropriate educational program for the student.
2. Information obtained by the school's alcohol and other drug program that would identify the student as an alcohol or other drug user may be disclosed only for those purposes and under conditions permitted by 42 CFR Part 2.
3. Information provided by a secondary school student while participating in a school-based alcohol or other drug counseling program that indicates that a parent, guardian or other person residing in the student's household is dependent upon or illegally using a substance shall be shared only for those purposes and conditions permitted by N.J.S.A. 18A:40A-7.1.

(c) Access to and disclosure of information in the student health record shall meet the requirements of the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g

and 34 CFR Part 99, incorporated herein by reference, as amended and supplemented, and N.J.A.C. 6A:32-7.

(d) The school district shall provide access to the student health record to licensed medical personnel not holding educational certification who are working under contract with or as employees of the school district only to the extent necessary to enable the licensed medical personnel to perform his or her duties.

1. Secretarial or clerical personnel under the supervision of the certified school nurse shall be permitted access to portions of the student health record necessary for entry and recording of data and for conducting routine clerical tasks as outlined in N.J.S.A. 18A:40-3.4 and N.J.A.C. 6A:32-7.5.

(e) Nothing in this section shall be construed to prohibit school personnel from disclosing to students or adults in connection with an emergency the information contained in the student health record if the release is necessary to protect the immediate health or safety of the student or other persons pursuant to N.J.A.C. 6A:32-7.4.

Recodified from N.J.A.C. 6A:16-1.5 and amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Student health records". In (a), substituted "school district" for "district board of education"; in (a)1 and (a)2, substituted "pursuant to" for "as required in"; in (a)2, deleted "of" preceding "exception"; rewrote introductory paragraph of (b); deleted (b)1 and (b)2; added new (c), (d), (f), (g)1 and (h); recodified former (c) and (d) as present (e) and (g); in (e)1, deleted "or guardian" following "parent"; and in (g), substituted "The school" for "Each" and inserted "school" preceding the second occurrence of "district". Former N.J.A.C. 6A:16-2.4, Nursing services to nonpublic school students, repealed.

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

6A:16-2.5 School health services to nonpublic schools

(a) The district board of education having nonpublic schools within school district boundaries shall provide nursing services to students enrolled in a nonpublic school, pursuant to N.J.S.A. 18A:40-23 et seq., as follows:

1. The school district shall provide services to students who are enrolled full-time;
2. Services shall be made available only to students of a nonpublic school that provided to the district board of education a report of the type and number of services provided during the previous school year;
3. The provision of nursing services shall include:
 - i. Assistance with medical examinations including dental screening;
 - ii. Screening of hearing;
 - iii. Maintenance of student health records and notification of local or county health officials of any student

who has not been properly immunized, pursuant to N.J.A.C. 8:57-4.1 through 4.20; and

iv. Scoliosis examinations of students between the ages of 10 and 18; and

4. The district board of education shall make every attempt to provide nursing services for students in nonpublic schools beginning at the start of the school year and continuing throughout the school year.

(b) The district board of education in which the nonpublic school is located shall adopt written policies and procedures for the extension of emergency care provided to public school students to full-time nonpublic school students who are injured or become ill at school or during participation on a school team or squad pursuant to N.J.A.C. 6A:16-2.1(a)4. The district board of education may include in its adopted written policies and procedures the provision of nursing services to preschool students enrolled in nonpublic schools in the event of an emergency, pursuant to N.J.S.A. 18A:40-27.1.

(c) The district board of education having nonpublic schools within school district boundaries may provide to nonpublic students additional medical services pursuant to N.J.S.A. 18A:40-26.a, including necessary equipment, materials, and services for immunizing from diseases students who are enrolled full-time in the nonpublic school pursuant to N.J.S.A. 18A:40-26.b and as required by N.J.A.C. 8:57-4.

1. Equipment comparable to that used in the school district may be loaned without charge to the nonpublic school for the purpose of providing services under this section. However, such equipment shall remain the property of the district board of education.

2. Costs of supplies comparable to that used in the school district and transportation may be charged to the funds allocated for each participating nonpublic school provided the costs are directly related to the required basic nursing services and the permitted additional medical services.

(d) Nursing services funded by the district board of education pursuant to N.J.S.A. 18A:40-23 et seq. shall be provided by a registered nurse licensed by the New Jersey State Board of Nursing who is an employee of the school district or a third-party contractor or is an independent contractor.

(e) A district board of education either shall employ a qualified independent contractor to provide nursing services or shall contract, pursuant to N.J.S.A. 18A:40-28, with other district boards of education or with a public or private agency approved by the Commissioner to provide nursing services, pursuant to N.J.A.C. 6A:14-5.2. Prior to any change in the provision of nursing services, the district board of education shall provide timely and meaningful consultation with appropriate nonpublic school representatives, including parents, pursuant to N.J.S.A. 18A:40-28.

(f) The nursing services provided to nonpublic school students shall not include instructional services.

(g) A nonpublic school may decline nursing services required or permitted under this subchapter by submitting to the district board of education notification signed by the chief school administrator of the nonpublic school pursuant to N.J.S.A. 18A:40-29 and still may request additional services pursuant to (c) above.

(h) A student who is enrolled in a nonpublic school and whose parent objects to the student receiving any service provided under this subchapter shall not be compelled to receive the service except for a physical or medical examination to determine whether the student is ill or infected with a communicable disease pursuant to N.J.S.A. 18A:40-30.

(i) The district board of education shall provide health services based upon the following:

1. The funding for services shall be based upon the nonpublic school enrollment on the last school day prior to October 16 of the preceding school year;

2. The funding for services shall be based on a report provided to the Department by the school district or nonpublic school that includes the nonpublic school enrollment on the last school day prior to October 16 of the preceding school year; and

3. The funds expended by the district board of education for administrative costs shall be limited to the actual costs or six percent of the funds allocated annually for each participating nonpublic school, whichever is less. Administrative costs shall include, but not be limited to, the costs related to the school district's annual consultation, bidding, program and contract management, and oversight and quality control.

(j) The chief school administrator or his or her designee of the school district in which a nonpublic school is located shall confer annually with the administrator of the nonpublic school for the following purposes:

1. To advise the nonpublic school of the amount of funds allocated to it by the Department for the provision of health services for full-time students enrolled in the nonpublic school;

2. To agree on the basic health services that shall be provided and the additional medical services, equipment, or supplies that may be provided as set forth in N.J.S.A. 18A:40-23 et seq.;

3. To discuss the criteria to be used in the school district's selection of a nursing service provider for the nonpublic school;

4. To ascertain the level of satisfaction of the nonpublic school with the current nursing service provider;

5. If the chief school administrator or designee and the nonpublic school administrator cannot reach agreement regarding the health services and additional medical services to be provided, the county office of education shall provide assistance;

6. To assure that a description of the provision of nursing services is reflected in the school district's nursing services plan; and

7. To ensure nonpublic school students in the school district who are knowingly without medical coverage have access to the NJ FamilyCare program and to make accessible information regarding the program to the students, pursuant to N.J.S.A. 18A:40-34.

(k) For the purposes of monitoring and recordkeeping, the district board of education providing health services to nonpublic schools shall submit to the executive county superintendent on or before October 1 annually the following information and shall provide a copy to the chief school administrator of each nonpublic school within school district boundaries:

1. A written statement verifying that the required conference was held with the nonpublic school;

2. A copy of the contract with an independent contractor or agency to provide services, if applicable, and approved minutes of the district board of education meeting approving the contract that describes the methods by which the health services will be provided to nonpublic school students for the ensuing year, including a rationale for the distribution of funds; and

3. A description of the type and number of services that were provided during the previous school year on a Commissioner-approved form.

New Rule, R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

Rewrote the section.

Case Notes

Department of Education's determination was not arbitrary, capricious, or unreasonable that an educational services commission (ESC) established under N.J.S.A. 18A:6-51 et seq., which had contracted with two school districts to provide Chapter 26 nursing services to a nonpublic school pursuant to N.J.S.A. 18A:40-23 et seq., could not charge the payment of sick-leave benefits of one of its nurse employees

as a separate 226 expense, nor could the ESC require the nonpublic school or the responsible school districts to set aside funds for this purpose; instead, the expense may be factored into the hourly rate an ESC charges for the service (adopting and supplementing Initial Decision, 2006 N.J. AGEN LEXIS 443). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ., Div. of Finance*, OAL Dkt. No. EDU 10284-05, Commissioner's Decision (August 11, 2006).

When public schools make contracts with educational service commissions to provide nursing services, the nurses are considered "employees of a third-party contractor" under former N.J.A.C. 6A:16-2.4(b) (now N.J.A.C. 6A:16-2.5(d)). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ., Div. of Finance*, OAL Dkt. No. EDU 10284-05, Commissioner's Decision (August 11, 2006).

SUBCHAPTER 3. COMPREHENSIVE ALCOHOL, TOBACCO, AND OTHER DRUG ABUSE PROGRAMS

6A:16-3.1 Establishment of comprehensive alcohol, tobacco, and other drug abuse programs

(a) Each district board of education shall establish a comprehensive program of prevention, intervention, referral for evaluation, referral for treatment, and continuity of care for student alcohol, tobacco, and other drug abuse in the school district's public elementary and secondary schools, in accordance with N.J.S.A. 18A:40A-3, 10, and 15.

1. The purpose of the prevention component of the program shall be to:

i. Keep students from using alcohol, tobacco or other drugs;

ii. Reduce or eliminate the incidence and prevalence of student alcohol, tobacco and other drug abuse;

iii. Reduce the factors that place students at risk for involvement with alcohol, tobacco or other drugs through school and community-based planning processes;

iv. Contribute to the development of school environments and alternative activities that are alcohol, tobacco and other drug-free;

v. Increase the knowledge and skills of students, staff and community members for avoiding the harmful effects of alcohol, tobacco and other drug use; and

vi. Actively involve staff, students, parents, and other community members in the development and implementation of prevention program plans.

elopmental ages of student offenders and students' histories of inappropriate behaviors in accordance with N.J.A.C. 6A:16-7.2 through 7.8, as appropriate.

(c) The code of student conduct shall include, at a minimum:

1. A description of students' responsibilities that includes expectations for academic achievement, behavior and attendance, pursuant to N.J.A.C. 6A:32-8 and 12.1;

2. A description of behaviors that result in suspension or expulsion, pursuant to N.J.S.A. 18A:37-2;

3. A description of students' rights to:

i. Advance notice of behaviors that result in suspensions and expulsions that have been identified pursuant to N.J.S.A. 18A:37-2;

ii. Education that supports students' development into productive citizens;

iii. Attendance in safe and secure school environments;

iv. Attendance at school irrespective of students' marriage, pregnancy or parenthood;

v. Due process appeal procedures and policies, pursuant to N.J.A.C. 6A:3-1.3 through 1.17; N.J.A.C. 6A:4; and, where applicable, N.J.A.C. 6A:14-2.7 and 2.8, and N.J.A.C. 6A:16-7.2 through 7.5;

vi. Parent notification consistent with the policies and procedures established pursuant to N.J.A.C. 6A:16-6.2(b)3, this section, and N.J.A.C. 6A:16-7.2 through 7.8; and

vii. Protections pursuant to 20 U.S.C. §1232g, Family Educational Rights and Privacy Act; 34 CFR 99, Family Educational Rights and Privacy; 20 U.S.C. §1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; P.L. 104-191, Health Insurance Portability and Accountability Act; 45 CFR 160, General Administrative Requirements; 20 U.S.C. § 7165, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupils, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil records, creation, maintenance and retention, security and access, regulations, nonliability; N.J.S.A. 2A:4A-60, Disclosure of juvenile information, penalties for disclosure; N.J.A.C. 6A:32-7, Student Records; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws and rules pertaining to student protections;

4. A description of comprehensive behavioral supports that promote positive student development and the students' abilities to fulfill the behavioral expectations estab-

lished by the district board of education. The description of comprehensive behavioral supports may include:

i. Positive reinforcement for good conduct and academic success;

ii. Supportive interventions and referral services;

iii. Remediation of problem behavior that takes into account the behavior's nature, the students' developmental ages, and the students' histories of problem behaviors and performance; and

iv. For students with disabilities, the behavior interventions and supports shall be determined and provided pursuant to N.J.A.C. 6A:14;

5. A description of school responses to violations of behavioral expectations established by the district board of education that, at a minimum, are graded according to the severity of the offenses, and consider the developmental ages of the student offenders and their histories of inappropriate behaviors that shall:

i. Include a continuum of actions designed to remediate and, where necessary or required by law, to impose sanctions;

ii. Be consistent with other responses, pursuant to N.J.A.C. 6A:16-5.5 through 5.7;

iii. Provide for the equitable application of the code of student conduct without regard to race; color; religion; ancestry; national origin; nationality; sex; gender; sexual orientation; gender identity or expression; marital, domestic-partnership, or civil-union; mental, physical, or sensory disability; or any other distinguishing characteristic, pursuant to N.J.S.A. 10:5-1 et seq.; and

iv. Be consistent with the provisions of N.J.S.A. 18A:6-1, Corporal punishment of pupils;

6. Expectations and consequences consistent with the district board of education's policies and procedures on attendance, pursuant to N.J.A.C. 6A:16-7.6, and harassment, intimidation, and bullying, pursuant to N.J.A.C. 6A:16-7.7; and

7. A current list of community-based health and social service provider agencies available to support a student and the student's family, as appropriate, and a list of legal resources available to serve the community.

(d) A district board of education may deny participation in extracurricular activities, school functions, sports, graduation exercises or other privileges as disciplinary sanctions when designed to maintain the order and integrity of the school environment.

Recodified from N.J.A.C. 6A:16-5.1 and amended by R.2005 d.297, effective September 6, 2005.

See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

Deleted former (b) through (e); rewrote (a); added new (b) through (d).

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "adopt"; in (a)5iv, inserted "school"; in (a)7, inserted "Education Improvement"; in (b)2, inserted

“secure,”; in (c)1, updated N.J.A.C. reference; in (c)3iii, inserted “and secure”; in (c)3vii, substituted “6A:32-7, Student Records” for “6:3-6, Pupil Records”; in (c)4, substituted “district board of education” for “school district”, and in (c)6, updated N.J.A.C. reference.

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In the introductory paragraph of (a), substituted “school buses” for “a school bus” and updated the N.J.A.C. references; in (b)6, inserted “in accordance with N.J.A.C. 6A:16-7.2 through 7.5 and 7.6 as appropriate”; in (c)3v, substituted “appeal procedures and policies” for “and appeal procedures” and updated the N.J.A.C. references; in (c)3vi, updated the N.J.A.C. references; in (c)3vii, inserted “N.J.A.C. 6A:32-7, Student Records;” and added (e).

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Administrative correction.

See: 47 N.J.R. 2634(a).

Case Notes

Regarding a student’s long-term suspension, his due process rights were adequately protected by the written notification given to his parents pursuant to N.J.A.C. 6A:16-7.3(a). The superintendent of schools adequately explained that the student was charged with violation of the Board of Education policies, possession and consumption of alcohol under the legal age, and possession of a weapon for an unlawful purpose. It explained that a formal hearing would be conducted, explained the student’s right to consult an attorney, and have that attorney present. The suspension was proper under N.J.A.C. 6A:16-7.1(a) and (b) given the seriousness of the infractions. E.R. ex. Rel. O.R. v. Ocean Twp. Bd. of Educ., OAL DKT. No. EDS 16867-13, 2014 N.J. AGEN LEXIS 162, Final Decision (April 15, 2014).

Initial Decision (2008 N.J. AGEN LEXIS 1265) adopted, which found that, while the school administration did not act arbitrarily, capriciously, or unreasonably by exercising its statutory authority to discipline one student for a physical assault upon another, it may not have been wise to suspend the student who was the victim rather than the aggressor; while evenhandedness in enforcing discipline must be applied, the school district should have taken into account degrees of culpability in determining the appropriateness of the penalty. Because the student had no prior record of disciplinary infractions and did not initiate the physical confrontation, even a suspension of only one day was excessive and should have been modified to a written reprimand. L.L. ex rel. B.L. v. Bd. of Educ. of Clifton, OAL Dkt. No. EDU 5652-05, 2008 N.J. AGEN LEXIS 1187, Final Decision (October 15, 2008).

Board of education’s discipline of a student as a result of his involvement in a fight on school grounds was not arbitrary or unreasonable; the student drove participants to and away from the fight, and his punishment included a three-day in-school suspension and suspension from extracurricular activities, including football (adopting 2008 N.J. AGEN LEXIS 31 as supplemented). S.L. ex rel. D.L. v. Bd. of Educ. of Verona, OAL Dkt. No. EDU 9009-07, 2008 N.J. AGEN LEXIS 268, Commissioner’s Decision (March 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 31) adopted as supplemented, which concluded that suspension from certain high school extracurricular activities does not implicate a student’s property interest in education, because the only right protected is the right to a thorough and efficient education. S.L. ex rel. D.L. v. Bd. of Educ. of Verona, OAL Dkt. No. EDU 9009-07, 2008 N.J. AGEN LEXIS 268, Commissioner’s Decision (March 10, 2008).

6A:16-7.2 Short-term suspensions

(a) In each instance of a short-term suspension, a district board of education shall assure the rights of a student suspended for one, but not more than 10 consecutive school days by providing for the following:

1. As soon as practical, oral or written notice of charges to the student.

i. When charges are denied, an explanation of the evidence forming the basis of the charges also shall be provided;

2. Prior to the suspension, an informal hearing during which the student is given the opportunity to present his or her version of events regarding his or her actions leading to the short-term suspension and is provided notice of the school district’s actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5:

i. The informal hearing shall be conducted by a school administrator or his or her designee;

ii. To the extent that a student’s presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process, the student may be immediately removed from the student’s educational program and the informal hearing shall be held as soon as practical after the suspension;

iii. The informal hearing shall take place even when a school staff member has witnessed the conduct forming the basis of the charge; and

iv. The informal hearing and the notice given may take place at the same time;

3. Oral or written notification to the student’s parents of the student’s removal from his or her educational program prior to the end of the school day on which the school administrator decides to suspend the student. The notification shall include an explanation of:

i. The specific charges;

ii. The facts on which the charges are based;

iii. The provision(s) of the code of student conduct the student is accused of violating;

iv. The student’s due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3 and this section; and

v. The terms and conditions of the suspension.

4. Appropriate supervision of the student while waiting for the student’s parent to remove the student from school during the school day; and

5. Academic instruction either in school or out of school that addresses the Core Curriculum Content Standards.

i. The student’s academic instruction shall be provided within five school days of the suspension.

ii. At the completion of a short-term suspension, the district board of education shall return a general education student to the general education program from which he or she was suspended.

iii. The academic instruction provided to a student with a disability shall be provided consistent with N.J.A.C. 6A:14.

(b) The suspending principal shall immediately report the suspension to the chief school administrator, who shall report it to the district board of education at its next regular meeting, pursuant to N.J.S.A. 18A:37-4.

(c) An appeal of the district board of education's decision affecting the general education student's educational program shall be made to the Commissioner, in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17.

(d) For a student with a disability, the provisions of this section shall be provided in addition to all procedural protections set forth in N.J.A.C. 6A:14.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Rewrote (a).

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (a)3iv, updated the N.J.A.C. references; in (a)5i, substituted "The instruction" for "Services"; deleted former (c); and recodified former (d) as (c).

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Case Notes

An Administrative Law Judge concluded that a county board of education had violated the rights of the minor son of the petitioners by imposing a long-term out-of-school suspension on him without providing a formal hearing and written notice in compliance with N.J.A.C. 6A:16-7.3 and by failing to provide home instruction within five days of the start of that suspension as required by N.J.A.C. 6A:16-10.2(b). Even though the suspension as originally imposed was a short-term suspension that was governed by the more lenient standards in N.J.A.C. 6A:16-7.2 (and petitioners did not claim that the board had violated that provision), once the suspension was extended beyond the original five-day term by the administration, the board had a duty to comply with the applicable regulations. Petitioners were also entitled to relief in the form of an order requiring the board to expunge their son's records so that they reflected only the original five-day suspension. *L.K. & A.K. ex rel. L.K. v. N. Burlington Cnty. Reg'l Bd. of Educ.*, OAL Dkt. No. EDU 6071-12, AGENCY Dkt. No. 92-4/12, 2014 N.J. AGEN LEXIS 38, Initial Decision (January 27, 2014).

Initial Decision (2008 N.J. AGEN LEXIS 1265) adopted, which found that a student's due process rights were not violated when the Board discussed a disciplinary matter outside of the presence of both parties because the student and his mother were given adequate opportunity to present his version of events at an "informal hearing" and also enjoyed the right to a hearing before the OAL, curing any deficiencies that may have occurred at the district level. *L.L. ex rel. B.L. v. Bd. of Educ. of Clifton*, OAL Dkt. No. EDU 5652-05, 2008 N.J. AGEN LEXIS 1187, Final Decision (October 15, 2008).

There is no requirement that a parent submit a writing to the school administrators that registers his or her disagreement with the discipline imposed upon his or her child before appealing that discipline to the Commissioner. *E.T. ex rel. T.T. v. Bd. of Educ. of Egg Harbor*, OAL Dkt. No. EDU 10505-07, 2008 N.J. AGEN LEXIS 1238, Final Decision (July 7, 2008).

There is no bar in N.J.A.C. 6A:16-7.2 to appealing short-term suspensions to the Commissioner. *E.T. ex rel. T.T. v. Bd. of Educ. of Egg Harbor*, OAL Dkt. No. EDU 10505-07, 2008 N.J. AGEN LEXIS 1238, Final Decision (July 7, 2008).

Case was remanded to the OAL for a hearing with findings of fact and legal conclusions concerning the sufficiency of the district's procedures and the merits of a father's challenge to the eight-day suspension

imposed upon his child for making terrorist threat in class. While it was clear that the parents were sent a letter identifying the date of the suspension and the charge, as mandated by N.J.A.C. 6A:16-7.2(a)(3)(i), the facts on which the charge was based, the policy number alleged to have been violated, and articulation of the child's due process rights were not evident in the notice. *E.T. ex rel. T.T. v. Bd. of Educ. of Egg Harbor*, OAL Dkt. No. EDU 10505-07, 2008 N.J. AGEN LEXIS 1238, Final Decision (July 7, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 67) adopted, which concluded that regulations providing for an informal hearing to give students the opportunity to present their version of events regarding the actions leading to the short-term suspension were satisfied where ninth-grade students were given oral notice of allegations of plagiarism in computer assisted drafting class and were afforded an opportunity to explain their side of the story when they made their admission of improper copying of other students' drawings. *T.B.M. ex rel. M.M. v. Moorestown Bd. of Educ.*, OAL Dkt. Nos. EDU 2780-07 and EDU 2782-07 (CONSOLIDATED), Commissioner's Decision (April 7, 2008).

Contrary to petitioner's contention that he should have been afforded a hearing before the board of education, his 10-day suspension for possession of a weapon on school property was a short-term penalty under N.J.A.C. 6A:16-7.2 and petitioner had received the informal hearing required by that rule; in contrast, N.J.A.C. 6A:16-5.5 through N.J.A.C. 6A:16-5.7, relied on by petitioner, are offenses that carry serious penalties, including expulsion and suspensions up to a year or more. *R.O. ex rel. R.O. v. Bd. of Educ. of W. Windsor-Plainsboro School Dist.*, OAL Dkt. No. EDU 2010-05, 2006 N.J. AGEN LEXIS 275, Commissioner's Decision (March 17, 2006).

6A:16-7.3 Long-term suspensions

(a) In each instance of a long-term suspension, the district board of education shall assure the rights of a student suspended for more than 10 consecutive school days by providing the following:

1. Notification to the student of the charges prior to his or her removal from school;
2. Prior to the suspension, an informal hearing during which the student is given the opportunity to present his or her version of events regarding his or her actions leading to the long-term suspension and is provided notice of the school district's actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5;
3. Immediate notification to the student's parents of the student's removal from school;
4. Appropriate supervision of the student while waiting for the student's parents to remove the student from school during the school day;
5. Written notification to the parents by the chief school administrator or his or her designee within two school days of the initiation of the suspension, stating:
 - i. The specific charges;
 - ii. The facts on which the charges are based;
 - iii. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3 and this section; and

iv. Further engagement by the student in conduct warranting expulsion, pursuant to N.J.S.A. 18A:37-2, shall amount to a knowing and voluntary waiver of the student's right to a free public education, in the event that a decision to expel the student is made by the district board of education, pursuant to N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.4.

(1) The district board of education shall request from the parent(s) and student written acknowledgement of the notification provided pursuant to (a)5iv above subsequent to the removal of the student from his or her educational program, pursuant to this section;

6. A list of witnesses and their statements or affidavits, if any, no later than five days prior to the formal hearing, pursuant to (a)10 below;

7. For a student with a disability, a manifestation determination, pursuant to N.J.A.C. 6A:14-2.8 and the Federal rules incorporated by reference therein;

8. Information on the student's right to secure an attorney and legal resources available in the community identified pursuant to N.J.A.C. 6A:16-7.1(c)7;

9. Either in- or out-of-school educational services that are comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25, which may include a public education program provided in accordance with N.J.A.C. 6A:16-9 or 10.

i. The student's educational services shall be provided within five school days of the suspension.

ii. The district board of education shall make decisions regarding the appropriate educational program and support services for the suspended general education student based on the Core Curriculum Content Standards and the following considerations:

(1) A behavioral assessment or evaluation including, but not limited to, a referral to the child study team, as appropriate;

(2) The results of relevant testing, assessments, or evaluations of the student;

(3) The student's academic, health and behavioral records;

(4) The recommendation of the chief school administrator, principal or other relevant school or community resource;

(5) Considerations of parental input; or

(6) Consultation with the intervention and referral services team, in accordance with N.J.A.C. 6A:16-8.

iii. Educational services provided to a student with a disability shall be provided consistent with N.J.A.C. 6A:14.

10. A formal hearing before the district board of education that shall, at a minimum:

i. Be conducted by the district board of education or delegated by the board to a board committee, a school administrator, or an impartial hearing officer for the purpose of determining facts or making recommendations.

(1) Before taking final action, the district board of education as a whole shall receive and consider either a transcript or detailed report on the hearing;

ii. Include the opportunity for the student to:

(1) Confront and cross-examine witnesses if there is a question of fact; and

(2) Present his or her own defense, and produce oral testimony or written supporting affidavits;

iii. Take place no later than 30 calendar days following the day the student is suspended from the general education program; and

iv. Result in the district board of education's decision that shall be based, at a minimum, on the preponderance of competent and credible evidence;

11. A written statement to the student's parents regarding the district board of education's decision within five school days after the close of the hearing. The statement shall include, at a minimum:

i. The charges considered;

ii. A summary of the documentary or testimonial evidence from both the student and the administration that was brought before the district board of education at the hearing;

iii. Factual findings relative to each charge and the district board of education's determination of each charge;

iv. Identification of the educational services to be provided to the student, pursuant to (a)9 above;

v. The terms and conditions of the suspension; and

vi. The right to appeal to the Commissioner the district board of education's decision regarding the student's general education program, in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17;

12. If at any time it is found that the student did not commit the offense, the student shall be immediately returned to the program from which he or she was removed; and

13. At the completion of a long-term suspension, the district board of education shall return a general education student to the general education program.

(b) An appeal of the district board of education's decision regarding the general education student's program shall be made to the Commissioner, in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17.

(c) Suspension of a general education student shall not be continued beyond the district board of education's second regularly scheduled meeting following the suspension, unless the district board of education so determines, pursuant to N.J.S.A. 18A:37-5.

1. The district board of education shall determine whether to continue the suspension, pursuant to (a) above, based on the following criteria:

- i. The nature and severity of the offense;
- ii. Its removal decision;
- iii. The results of relevant testing, assessments, or evaluations of the student; and
- iv. The recommendation of the chief school administrator, after considering input from the principal or director of the alternative education program or home or other in-school or out-of-school instruction program in which the student has been placed.

2. The district board of education shall develop and adopt policies and procedures providing for action on the continuation of student suspensions in the event of cancellation of the first or second regular board meeting pursuant to N.J.S.A. 18A:37-4 and 5.

(d) When the district board of education votes to continue a general education student's suspension, it shall review the case, in consultation with the chief school administrator, at each subsequent district board of education meeting for the purpose of determining:

1. The status of the student's suspension;
2. The appropriateness of the suspended student's current educational program; and
3. Whether the suspended student's current placement, pursuant to (a)9 above, should continue or whether the student should return to the general education program.

(e) When the district board of education votes to continue a general education student's suspension, it shall make, in consultation with the chief school administrator, the final determination on:

1. When the student is prepared to return to the general education program;
2. Whether the student will remain in an alternative education program or receive home or other in- or out-of-

school instruction, based on the criteria set forth in (c)1i through iv above; or

3. Whether to initiate expulsion proceedings in accordance with N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.4.

(f) The district board of education shall provide a general education student suspended under this section with an appropriate educational program or services, based on the criteria set forth under (a)9ii above, until the student graduates from high school or reaches the age of 20, whichever comes first.

1. The educational program shall be consistent with N.J.A.C. 6A:16-9.2 and 10.2 and 6A:14-2 and 4.3, whichever is applicable; or

2. The educational services provided, either in- or out-of-school, shall be comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25.

(g) For a student with a disability who receives a long-term suspension, the district board of education shall proceed in accordance with N.J.A.C. 6A:14 in determining or changing the student's educational placement to an interim or alternate educational setting.

1. All procedural protections set forth in N.J.A.C. 6A:14 and this section shall be afforded to a student with a disability who is subjected to a long-term suspension.

2. All decisions concerning the student's educational program or placement shall be made by the student's individualized education program team.

3. The provisions of (b) through (f) above shall not apply to students with disabilities.

Amended by R.2006 d.366, effective October 16, 2006.
See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "consecutive" and "the following"; added new (a)2; recodified former (a)2 through (a)12 as present (a)3 through (a)13; in a(6), inserted " , no later than five days prior to the formal hearing, pursuant to a(10) below"; in (a)7, substituted "the Federal" for "federal"; added new (a)9ii; recodified former (a)9ii as (a)9iii; in (a)10i, substituted a comma for "or to" following "committee" and inserted "or an impartial hearing officer"; in (a)10iii, deleted "and" from the end; in (a)10iv, inserted "and" at the end; added (a)10v; in (a)11ii, deleted "and" from the end; in (a)11iii, inserted "of each charge"; added (a)11iv through (a)11vi; in (a)12, substituted "did not commit" for "is not guilty of" and deleted "and" from the end; in (a)13, substituted "to have committed" for "guilty of" and " ; and" for a period at the end; added (a)14; in (b), substituted "general education student's" for "student's general education"; in introductory paragraph of (c), substituted "shall" for "may"; in (c)2, inserted "develop and"; in (d)3, substituted "Whether" for "If" and "whether" for "if" and inserted " , pursuant to (a)9 above"; deleted (f), recodified (g) and (h) as (f) and (g); in introductory paragraph of (f), substituted "The" for "A" and "(a)9ii" for "(f)" and inserted " , whichever comes first" at the end; in the introductory paragraph of (g), substituted "in determining" for "-2.8 in determining"; and in (g)1, inserted "and this section".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (a)5iii, updated the first N.J.A.C. reference; in (a)10i and (a)10i(1), inserted "district", in (a)10iii, inserted "and" at the end; deleted former (a)10iv; recodified former (a)10v as (a)10iv; in (c)1iv, inserted "in-school or"; and in (g)3, substituted "(f)" for "(g)".

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Case Notes

Parents of a student who was suspended and was offered an alternative educational placement in accordance with N.J.A.C. 6A:16-7.3(a) failed to state a Fourteenth Amendment substantive due process claim arising from school officials' alleged coercion of the parents to accept the student's classification under the Individuals with Disabilities Education Act in order to avoid the alternative placement; although the student had a protected right to a free public education pursuant to N.J.S.A. 18A:38-1, the parents failed to allege that there was no rational basis for the student's suspension. *M.G. v. Crisfield*, 547 F.Supp.2d 399, 2008 U.S. Dist. LEXIS 16953 (D.N.J. 2008).

Regarding a student's long-term suspension, his due process rights were adequately protected by the written notification given to his parents pursuant to N.J.A.C. 6A:16-7.3(a). The superintendent of schools adequately explained that the student was charged with violation of the Board of Education policies, possession and consumption of alcohol under the legal age, and possession of a weapon for an unlawful purpose. It explained that a formal hearing would be conducted, explained the student's right to consult an attorney, and have that attorney present. The suspension was proper under N.J.A.C. 6A:16-7.1(a) and (b) given the seriousness of the infractions. *E.R. ex. Rel. O.R. v. Ocean Twp. Bd. of Educ.*, OAL DKT. No. EDS 16867-13, 2014 N.J. AGEN LEXIS 162, Final Decision (April 15, 2014).

An Administrative Law Judge concluded that a county board of education had violated the rights of the minor son of the petitioners by imposing a long-term out-of-school suspension on him without providing a formal hearing and written notice in compliance with N.J.A.C. 6A:16-7.3 and by failing to provide home instruction within five days of the start of that suspension as required by N.J.A.C. 6A:16-10.2(b). Even though the suspension as originally imposed was a short-term suspension that was governed by the more lenient standards in N.J.A.C. 6A:16-7.2 (and petitioners did not claim that the board had violated that provision), once the suspension was extended beyond the original five-day term by the administration, the board had a duty to comply with the applicable regulations. Petitioners were also entitled to relief in the form of an order requiring the board to expunge their son's records so that they reflected only the original five-day suspension. *L.K. & A.K. ex rel. L.K. v. N. Burlington Cnty. Reg'l Bd. of Educ.*, OAL Dkt. No. EDU 6071-12, AGENCY Dkt. No. 92-4/12, 2014 N.J. AGEN LEXIS 38, Initial Decision (January 27, 2014).

ALJ erred in substituting her judgment for that of the Board and modifying the length and terms of the Board's suspension of a student because there was a presumption of validity that attached to decisions of a Board and such decisions could not be overturned unless the action was arbitrary, capricious, or unreasonable. The long-term suspension in this case was appropriate where there was no question that the student used profanity, was willfully disobedient, and was openly defiant to an individual who had authority over her, and where the student had a lengthy disciplinary record (rejecting 2009 N.J. AGEN LEXIS 950). *A.F. ex rel. J.H. v. Bd. of Educ. of Monmouth Reg'l School Dist.*, OAL Dkt. No. EDU 4547-09, 2009 N.J. AGEN LEXIS 743, Final Decision (September 15, 2009).

6A:16-7.4 Expulsions

(a) A district board of education may expel a general education student from school, pursuant to N.J.S.A. 18A:37-2, only after the district board of education has provided the following:

1. The procedural due process rights set forth at N.J.A.C. 6A:16-7.1(c)3 and 7.3, subsequent to a long-term suspension, pursuant to N.J.A.C. 6A:16-7.3; and

2. An appropriate educational program or service, based on the criteria set forth at N.J.A.C. 6A:16-7.3(f).

- i. The educational program or service shall be consistent with the provisions of N.J.A.C. 6A:16-9.2 and 10.2 and 6A:14-2 and 4.3, whichever are applicable; or

- ii. The educational services provided, either in or out of school, shall be comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25.

(b) An appeal of the district board of education's decision regarding the cessation of the student's general education program shall be made to the Commissioner in accordance with N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3-1.3 through 1.17.

1. A district board of education shall continue to provide an appropriate educational program or service in accordance with (a)2 above until a final determination has been made on the appeal of the district board of education's action to expel a student.

(c) A student with a disability shall only be expelled from his or her current program in accordance with N.J.A.C. 6A:14.

Recodified from N.J.A.C. 6A:16-7.5 and amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section. Former N.J.A.C. 6A:16-7.4, Mandated student removals from general education, repealed.

6A:16-7.5 Conduct away from school grounds

(a) School authorities have the right to impose a consequence on a student for conduct away from school grounds that is consistent with the district board of education's code of student conduct, pursuant to N.J.A.C. 6A:16-7.1.

1. This authority shall be exercised only when it is reasonably necessary for the student's physical or emotional safety, security and well-being or for reasons relating to the safety, security and well-being of other students, staff or school grounds, pursuant to N.J.S.A. 18A:25-2 and 18A:37-2.

2. This authority shall be exercised only when the conduct that is the subject of the proposed consequence materially and substantially interferes with the requirements of appropriate discipline in the operation of the school.

3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education's approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3, or 7.4.

(b) School authorities shall respond to harassment, intimidation, or bullying that occurs off school grounds, pursuant to N.J.S.A. 18A:37-14 and 15.3 and N.J.A.C. 6A:16-1.3, 7.1, and 7.7.

(1) The district board of education shall not take formal disciplinary action based solely on the anonymous report;

viii. A procedure for prompt investigation of violation and complaint reports consistent with N.J.S.A. 18A:37-15.b(6)(a) through (f) and 16.d;

ix. A requirement for the principal, in conjunction with the school anti-bullying specialist, to define the range of ways in which a school will respond once an incident of harassment, intimidation, or bullying is identified, consistent with the range of responses adopted by the board of education, pursuant to N.J.S.A. 18A:37-15.b(7);

(1) The responses, at a minimum, shall include support for victims of harassment, intimidation, or bullying and corrective actions for documented systemic problems related to harassment, intimidation, or bullying;

x. A statement that prohibits a district board of education member, school employee, student, or volunteer from engaging in reprisal, retaliation, or false accusation against a victim, witness, or any person who reports or has reliable information about an act of harassment, intimidation, or bullying.

(1) The statement shall include the consequence(s) and appropriate remedial action(s) for a person who engages in reprisal or retaliation;

xi. Consequences and appropriate remedial action for a person found to have falsely accused another as a means of retaliation or harassment, intimidation, or bullying;

xii. A statement of how the harassment, intimidation, and bullying policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions and on school buses.

(1) Notice of the district board of education's policy shall appear in any publication of the school district that sets forth the code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, for schools within the school district;

xiii. A requirement that a link to the harassment, intimidation, and bullying policy be posted prominently on the home page of the school district's and each school's website;

xiv. A requirement that the harassment, intimidation, and bullying policy be distributed annually to all school staff, students, and parents;

xv. A requirement that the name of the school district's anti-bullying coordinator and his or her school phone number, school address, and school e-mail address be listed on the home page of the school district's website;

xvi. A requirement that the name of the school's anti-bullying specialist and his or her school phone number, school address, and school e-mail address be listed on the home page of the school's website; and

xvii. Provisions for appropriate responses to harassment, intimidation, or bullying, as defined in N.J.S.A. 18A:37-14 and N.J.A.C. 6A:16-1.3, that occurs off school grounds in cases in which a school employee is made aware of the actions or a school administrator should have known of an incident of harassment, intimidation, or bullying.

(1) Responses to harassment, intimidation, or bullying that occurs off school grounds shall be consistent with N.J.A.C. 6A:16-7.1 and 7.5 and this section.

(b) A district board of education shall not be prohibited from adopting a harassment, intimidation, and bullying policy that includes components more stringent than components set forth in N.J.S.A. 18A:37-15 and (a) above.

(c) A district board of education member, school employee, contracted service provider, student, or volunteer who has witnessed, or has reliable information that a student has been subject to harassment, intimidation, or bullying shall report the incident to the appropriate school official designated by the district board of education's policy, pursuant to N.J.S.A. 18A:37-15 and (a)2vii above, or to any school administrator or safe schools resource officer, who shall immediately initiate the school district's procedures concerning harassment, intimidation, and bullying.

1. A district board of education member or school employee who promptly reports an incident of harassment, intimidation, or bullying to the appropriate school official designated by the district board of education's policy, or to any school administrator or safe schools resource officer, and who makes the report in compliance with the district board of education's policy, is immune from a cause of action for damages arising from a failure to remedy the reported incident, as set forth in N.J.S.A. 18A:37-16.c.

(d) A school administrator who receives from a school district employee a report of harassment, intimidation, or bullying, and fails to initiate or conduct an investigation, or who should have known of an incident of harassment, intimidation, or bullying and fails to take sufficient action to minimize or eliminate the harassment, intimidation, or bullying, may be subject to disciplinary action.

(e) The district board of education shall:

1. Annually review the training needs of school employees and volunteers who have significant contact with students for the effective implementation of the harassment, intimidation, and bullying policies, procedures, programs and initiatives of the district board of education and implement training programs for school employees and volunteers who have significant contact with students, consistent with P.L. 2010, c. 122, the annual review of training needs and the findings of the annual review and update of the code of student conduct, pursuant to N.J.A.C. 6A:16-7.1(a)2.

i. Information regarding the district board of education's policy against harassment, intimidation, and bullying shall be incorporated into the school district's employee training program.

(1) The program shall be provided to full- and part-time staff, volunteers who have significant contact with students and persons contracted by the school district to provide services to students;

2. Develop a process for annually discussing with students the school district's harassment, intimidation, and bullying policy;

3. Annually conduct a re-evaluation, reassessment and review of its harassment, intimidation, and bullying policy, and make any necessary revisions, consistent with N.J.S.A. 18A:37-15.c.

i. The programs or other responses shall be planned in consultation with, at a minimum, parents and other community members, school employees, school volunteers, students, and school administrators;

4. Annually establish, implement, document, and assess bullying-prevention programs or approaches and other initiatives designed to create schoolwide conditions to prevent or intervene in harassment, intimidation, and bullying in schools of the school district.

i. Programs, approaches, and initiatives shall be planned in consultation with, at a minimum, parents and other community members, school employees, school volunteers, students, and school administrators; and

5. Submit to the executive county superintendent a copy of its approved harassment, intimidation, and bullying policy within 30 days of its adoption.

(f) The principal of each school in the school district shall appoint a school anti-bullying specialist to perform the functions established in N.J.S.A. 18A:37-20.a and c.

(g) The chief school administrator of the school district shall appoint a district anti-bullying coordinator to perform the functions established in N.J.S.A. 18A:37-20.b and c.

(h) The district board of education shall form a school safety team in each school in the school district to achieve the

purposes and perform the functions established in N.J.S.A. 18A:37-21.

(i) The requirements are promulgated pursuant to N.J.S.A. 18A:37-13 through 32 and shall not be interpreted to prevent a victim from seeking redress under any other available civil or criminal law.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "develop," and "and implement"; in (a)2ix, substituted a period for a semicolon at the end; added (a)2ix(1); in (d)1, inserted "school", and in (d)1i, deleted comma following "intimidation".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

Rewrote (a)2x.

Recodified from N.J.A.C. 6A:16-7.9 and amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was "Intimidation, harassment and bullying". Rewrote the section. Former N.J.A.C. 6A:16-7.7, Staff responsibilities, repealed.

6A:16-7.8 Student records and confidentiality

(a) When a student transfers to a public school district from another public school district, all information in the student's record related to disciplinary actions taken against the student by the school district and any information the school district has obtained pursuant to N.J.S.A. 2A:4A-60, Disclosure of juvenile information; penalties for disclosure, shall be provided to the receiving public school district in accordance with N.J.S.A. 18A:36-19a and N.J.A.C. 6A:32-7.5.

1. The record shall be provided within two weeks of the date the student enrolls in the receiving school district.

2. Written consent of the parent or adult student shall not be required as a condition of the record transfer.

i. Written notice of the transfer shall be provided to the parent or the adult student.

(b) When a student transfers to a private school, which includes all sectarian or nonsectarian nonprofit institutional day or residential schools that provide education for students placed by their parents and that are controlled by other than public authority, all student disciplinary records with respect to suspensions or expulsions shall be provided by the public school district of residence to the private school upon written request from the private school, in the same manner the records would be provided to a public school district, pursuant to 20 U.S.C. §6301, Title IV(A)IV §4155 of the Elementary and Secondary Education Act.

(c) A district board of education shall not use a student's past offenses on record to discriminate against the student.

(d) All records maintained pursuant to this subchapter shall conform with the requirements set forth at 20 U.S.C. §1232g, Family Educational Rights and Privacy Act; 34 CFR Part 99,

Family Educational Rights and Privacy; 20 U.S.C. §1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; P.L. 104-191, Health Insurance Portability and Accountability Act; 45 CFR Part 160, General Administrative Requirements; 20 U.S.C. § 7165, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupils, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil records, creation, maintenance and retention, security and access, regulations, nonliability; N.J.S.A. 2A:4A-60, Disclosure of juvenile information, penalties for disclosure; N.J.A.C. 6A:32-7, Student Records; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws and rules pertaining to student records and confidentiality.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "school" preceding "district" two times and updated N.J.A.C. reference; and in (d), substituted "6A:32-7, Student Records" for "6:3-6, Pupil Records".

Amended by R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

In (d), deleted the comma following "subchapter" and substituted "20 U.S.C. §1232g" for "20 U.S.C. §1232g".

Recodified from N.J.A.C. 6A:16-7.10 and amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section. Former N.J.A.C. 6A:16-7.8, Attendance, recodified to N.J.A.C. 6A:16-7.6.

Case Notes

Board did not have the authority to enter into a settlement agreement with parents in which one of the terms of the settlement was that the student's disciplinary records would not follow him to high school; the district did not have a high school and students who successfully completed eighth grade were sent to the Phillipsburg school district for their secondary education. N.J.A.C. 6A:16-7.10 (now N.J.A.C. 6A:16-7.8) required that the student's disciplinary records follow him to Phillipsburg. K.Y. ex rel. D.Y. v. Bd. of Educ. of Greenwich, OAL Dkt. No. EDU 5839-09, 2009 N.J. AGEN LEXIS 838, Final Decision (July 24, 2009).

N.J.A.C. 6A:16-7.10 (now N.J.A.C. 6A:16-7.8), which requires the transfer of disciplinary records between school districts, does not contain a provision limiting the receiving schools to schools located in New Jersey. S.S. & E.S. ex rel. E.S. v. Bd. of Educ. of Union, OAL Dkt. No. EDU 5179-07, 2007 N.J. AGEN LEXIS 1006, Commissioner's Decision (August 23, 2007).

6A:16-7.9 (Reserved)

Recodified to N.J.A.C. 6A:16-7.7 by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was "Intimidation, harassment and bullying".

6A:16-7.10 (Reserved)

Recodified to N.J.A.C. 6A:16-7.8 by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was "Student records and confidentiality".

SUBCHAPTER 8. INTERVENTION AND REFERRAL SERVICES

6A:16-8.1 Establishment of intervention and referral services

(a) District boards of education shall establish and implement in each school building in which general education students are served a coordinated system for planning and delivering intervention and referral services designed to assist students who are experiencing learning, behavior, or health difficulties, and to assist staff who have difficulties in addressing students' learning, behavior, or health needs. District boards of education shall choose the appropriate multi-disciplinary team approach for planning and delivering the services required under this subchapter.

1. The intervention and referral services shall be provided to aid students in the general education program; and

2. The intervention and referral services may be provided for students who have been determined to need special education programs and services.

i. The intervention and referral services provided for students determined to need special education programs and services shall be coordinated with the student's individualized education program team, as appropriate.

3. Child study team members and, to the extent appropriate, specialists in the area of disability may participate on intervention and referral services teams, pursuant to N.J.A.C. 6A:14-3.1(d)6.

Amended by R.2005 d.297, effective September 6, 2005.
See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

In (a), inserted "in which general education students are served" following "school building".

Amended by R.2006 d.366, effective October 16, 2006.
See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In (a), deleted comma following second occurrence of "behavior"; and in (a)2i, substituted "who have been determined to be in need of special education programs and services" for "with learning disabilities".

Amended by R.2014 d.047, effective March 17, 2014.
See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Case Notes

Pursuant to the clear dictates of federal regulations and the Federal Office of Special Education Programs' unequivocal direction, the parent on behalf of her child was entitled to independent evaluations for special education services at the school district's expense as a matter of law under N.J.A.C. 6A:14-2.5(c)1ii, iii. The provisions of N.J.A.C. 6A:14-3.3 do not, and cannot, be read to suggest that a child cannot be evaluated for special education services unless all general education interventions have failed. N.J.A.C. 6A:16-8.1 clearly envisions general education intervention that supplements, and certainly does not preclude, special education services. N.S. ex rel W.S. v. Newark Bd. of Educ., OAL DKT. NO. EDS 08229-14, 2014 N.J. AGEN LEXIS 734, Initial Decision (November 19, 2014).

District's unsuccessful effort to address a student's academic deficiencies in the beginning of his sophomore year through its interventions program before seeking to determine whether he should be classified as disabled was consistent with the mandate that districts provide inter-

vention and referral services to students experiencing learning difficulties to head off potentially unnecessary special education classification. C.C. ex rel. B.H. v. Spotswood Bd. of Educ., OAL Dkt. No. EDS11270-08, 2008 N.J. AGEN LEXIS 1175, Final Decision (November 21, 2008).

6A:16-8.2 Functions of intervention and referral services

(a) The functions of the system of intervention and referral services in each school building shall be to:

1. Identify learning, behavior and health difficulties of students;

2. Collect information on the identified learning, behavior, and health difficulties;

3. Develop and implement action plans that provide for appropriate school or community interventions or referrals to school and community resources, based on the collected data and desired outcomes for the identified learning, behavior, and health difficulties;

4. Provide support, guidance and professional development to school staff who identify learning, behavior and health difficulties;

5. Provide support, guidance and professional development to school staff who participate in each building's system for planning and providing intervention and referral services;

6. Actively involve parents or guardians in the development and implementation of intervention and referral services action plans;

7. Coordinate the access to and delivery of school resources and services for achieving outcomes identified in intervention and referral services action plans;

8. Coordinate the services of community-based social and health provider agencies and other community resources for achieving outcomes identified in intervention and referral services action plans;

9. Maintain records of all requests for assistance and all intervention and referral services action plans and all related student information, according to the requirements of 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act; 34 CFR Part 99, Family Educational Rights and Privacy; 20 U.S.C. §1232h, Protection of Pupil Rights; 34 CFR Part 98, Student Rights in Research, Experimental Programs, and Testing; P.L. 104-191, Health Insurance Portability and Accountability Act; 45 CFR Part 160, General Administrative Requirements; 20 U.S.C. § 7165, Transfer of school disciplinary records; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, Confidentiality of certain information provided by pupils, exceptions; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Pupil records, creation, maintenance and retention, security and access, regulations, nonliability; N.J.S.A. 2A:4A-60, Disclosure of juvenile

information, penalties for disclosure; N.J.A.C. 6A:32-7, Student Records; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws and rules pertaining to student records and confidentiality.

10. Review and assess the effectiveness of each intervention and referral services action plan in achieving the identified outcomes, and modify each action plan to achieve the outcomes, as appropriate; and

11. At a minimum, annually review intervention and referral services action plans and the actions taken as a result of the building's system of intervention and referral services, and make recommendations to the principal for improving school programs and services, as appropriate.

Amended by R.2005 d.297, effective September 6, 2005.
See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

Rewrote (a)9.

Amended by R.2006 d.366, effective October 16, 2006.
See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In (a)1 through (a)4, deleted comma following "behavior"; in (a)4 and (a)5, deleted comma following "guidance"; and in (a)9, substituted "6A:32-7, Student Records" for "6:3-6, Pupil Records".

Amended by R.2014 d.047, effective March 17, 2014.
See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

6A:16-8.3 (Reserved)

Amended by R.2006 d.366, effective October 16, 2006.
See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

In introductory paragraph of (a), inserted "written"; in (a)1, inserted "coordinated"; and in (a)2, inserted "school".

Repealed by R.2014 d.047, effective March 17, 2014.
See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Section was "School staff and community member roles for planning and implementing intervention and referral services".

SUBCHAPTER 9. ALTERNATIVE EDUCATION PROGRAMS

6A:16-9.1 Establishment of alternative education programs

(a) Each district board of education choosing to operate an alternative education program, pursuant to N.J.A.C. 6A:16-1.3, shall approve the alternative education program.

(b) Any alternative education program, pursuant to N.J.A.C. 6A:16-1.3, within a State agency, public college operated program or department-approved school shall be approved by the Commissioner of Education.

1. The agency, pursuant to (b) above, shall submit an initial or renewal application, as appropriate, to the designated county office of education, in accordance with the format prescribed by the Commissioner of Education.

2. Each alternative education program established by an agency, pursuant to (b) above, shall be separate and distinct from the already existing programs operated by these agencies.

3. Annually, each agency, pursuant to (b) above, operating an alternative education program, pursuant to N.J.A.C. 6A:16-1.3, shall obtain certificates of fire inspection and, if applicable, health, sewerage plant and health, ventilation, and air conditioning (HVAC) inspections.

i. These certificates shall be maintained and available upon request for review by the Department of Education.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Program approval". Rewrote the section.

6A:16-9.2 Program criteria

(a) Each alternative education program, pursuant to N.J.A.C. 6A:16-1.3, shall fulfill the following program criteria for both high school and middle school programs, unless otherwise noted:

1. A maximum student-teacher ratio of 12:1 for high school programs shall be maintained;

2. A maximum student-teacher ratio of 10:1 for middle school programs shall be maintained;

3. An Individualized Program Plan (IPP) shall be developed for each general education student enrolled in the program.

i. The IPP shall be developed by the school district in which the student is enrolled, in consultation with the student's parent and the receiving school district, pursuant to N.J.A.C. 6A:16-9.1(a), or other agency, pursuant to N.J.A.C. 6A:16-9.1(b), as appropriate.

ii. The IPP shall be developed by a multidisciplinary team of professionals with knowledge of the student's educational, behavioral, emotional, social and health needs.

iii. The IPP shall identify the appropriate instructional and support services for addressing the student's identified needs.

iv. The IPP shall be developed in accordance with the format prescribed by the Commissioner of Education and implemented within 30 calendar days of the student's placement in the alternative education program.

(1) The IPP may, but need not, be developed prior to the student's placement.

v. A multidisciplinary team shall review and, as appropriate, revise the IPP prior to the completion of the student's anticipated enrollment in the alternative education program or prior to the end of the school year, whichever occurs first.

(1) The multidisciplinary team shall review and revise the IPP, as needed, at any time during the student's enrollment in the alternative education program.

(2) The multidisciplinary team that reviews the IPP shall include staff from the sending school and the alternative education program who have knowledge of the student's educational, behavioral, emotional, social and health needs.

(3) The student's parent shall be advised of revisions to the IPP.

4. For a student with a disability, the alternative education program shall be consistent with the student's Individualized Education Program (IEP), pursuant to N.J.A.C. 6A:14, Special Education.

5. Individualized instruction to students shall address the Core Curriculum Content Standards, pursuant to N.J.A.C. 6A:8-3.1;

6. Instructional staff shall be appropriately certified, pursuant to N.J.A.C. 6A:9-3.3;

7. Compliance with attendance policies, pursuant to N.J.A.C. 6A:16-7.8 and 6A:32-8.3, shall be required;

8. Academic instruction sufficient to fulfill graduation requirements, pursuant to N.J.A.C. 6A:8-5.1, shall be provided to high school students;

9. Comprehensive support services and programs shall address each student's health, social and emotional development and behavior;

10. Case management services including, but not limited to, monitoring and evaluating student progress and coordinating instructional and support services, pursuant to (a)5, 8, and 9 above, shall be provided;

11. Services to facilitate the transition of students returning to the general or special education program shall be provided; and

12. A minimum student enrollment period of not less than two complete marking periods shall be required.

i. If the student is enrolled with less than two complete marking periods remaining prior to the end of the school year, the decision regarding continued placement in the alternative education program shall be made in accordance with N.J.A.C. 6A:16-9.3(a).

ii. If the student is removed from the general education program and placed in an alternative education program as a result of a firearm or assault with a weapon offense, the chief school administrator may modify the term of removal or placement on a case-by-case basis, pursuant to N.J.A.C. 6A:16-5.5(b)1 and 5.6(b)1.

iii. For the student with a disability, the enrollment period shall be determined by appropriate school personnel in accordance with the provisions of N.J.A.C. 6A:14, Special Education, and the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§1400 et seq.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Application process and approval criteria". Rewrote (a); and deleted (b).

6A:16-9.3 Student placements

(a) Student placement in an alternative education program, pursuant to N.J.A.C. 6A:16-1.3 and 9.1(a) and (b), shall be made as follows:

1. For the general education student, the district board of education shall make a determination of the student's risk for school failure and a decision regarding the student's placement in an alternative education program, at a minimum, based on the following:

i. The review of the student's academic, health and behavioral records, including the student's IPP, if one has been developed in accordance with N.J.A.C. 6A:16-9.2(a)3i through v, and the results of available testing, assessment or evaluation of the student;

ii. Consultation with and notice to the student's parent; and

iii. Information provided by the school-based multidisciplinary team responsible to provide intervention and referral services, pursuant to N.J.A.C. 6A:16-8, or other multidisciplinary team, as appropriate.

2. Decisions regarding the placement of the student with a disability in an alternative education program, pursuant to N.J.A.C. 6A:16-9.1(a) and (b), shall be based on the recommendation of appropriate personnel in accordance with N.J.A.C. 6A:14.

3. The district board of education shall provide mandatory placement for a student in an alternative education program for removal due to a firearms offense, pursuant to N.J.A.C. 6A:16-5.5 or an assault with weapons offense, pursuant to N.J.A.C. 6A:16-5.6.

i. If placement in an alternative education program, pursuant to N.J.A.C. 6A:16-9.1(a) or (b), is not available in the instance of a mandatory student placement, the student shall be provided home or out-of-school instruction, pursuant to N.J.A.C. 6A:16-10, until placement in an alternative education program is available.

ii. For the student with a disability, placement in an alternative education program for a firearm offense or an assault with a weapon offense shall occur only upon a determination by appropriate school personnel to place the student in accordance with the provisions of N.J.A.C. 6A:14, Special Education Programs and the Individuals with Disabilities Act of 2004, 20 U.S.C. §§1400 et seq.

(b) If a district board of education places a student in an alternative education program approved by another district board of education, pursuant to N.J.A.C. 6A:16-9.1(a)1, or another approved agency, pursuant to N.J.A.C. 6A:16-9.1(b), the district board of education of the sending school district

shall be responsible for ensuring compliance with the requirements of this subchapter.

(c) Decisions regarding continued placement in an alternative education program or a change to a student's placement shall be made as follows:

1. For the general education student returning to the general education program, the continued placement decision shall be made in accordance with N.J.A.C. 6A:16-9.2(a)11, as appropriate, and (a)1 above.

2. For a student with disabilities, the continued placement decision shall be made in accordance with N.J.A.C. 6A:16-9.2(a)11, as appropriate, (a)2 above, and N.J.A.C. 6A:14, Special Education.

Amended by R.2005 d.297, effective September 6, 2005.

See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

In (b), updated N.J.A.C. cite.

Amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Mandatory student placements". Rewrote the section.

SUBCHAPTER 10. HOME OR OUT-OF-SCHOOL INSTRUCTION

6A:16-10.1 Home or out-of-school instruction due to a temporary or chronic health condition

(a) The district board of education shall provide instructional services to an enrolled student, whether a general education student in kindergarten through grade 12 or special education student age three to 21, when the student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in their usual education setting, whether general education or special education.

1. To request home instruction due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written determination from the student's physician documenting the projected need for confinement at the student's residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.

i. The school district shall forward the written determination to the school physician, who shall verify the need for home instruction. The school physician may contact the student's physician to secure additional information concerning the student's diagnosis or need for treatment, and shall either verify the need for home instruction or shall provide to the district board of education reasons for denial.

2. The school district shall notify the parent concerning the school physician's verification or reasons for denial within five school days after receipt of the written determination by the student's physician.

3. The school district shall provide instructional services within five school days after receipt of the school physician's verification or, if verification is made prior to the student's confinement, during the first week of the student's confinement to the home or out-of-school setting.

(b) The school district shall be responsible for the costs of providing instruction in the home or out-of-school setting either directly, through online services, including any needed equipment, or through contract with another district board of education, educational services commission, jointure commission, or approved clinic or agency for the following categories of students:

1. A student who resides within the area served by the district board of education and is enrolled in a public school program; or

2. A student who is enrolled in a nonpublic school that is located within the area served by the district board of education pursuant to N.J.S.A. 18A:46A-1 et seq.

(c) Home or out-of-school instruction shall meet the following minimum standards:

1. The school district shall establish a written plan for delivery of instruction to continue the student's academic progress and to maintain a record of delivery of instructional services and student progress.

2. The teacher providing instruction shall be a certified teacher.

3. The teacher shall provide instruction for the number of days and length of time sufficient to continue the student's academic progress and dependent upon the student's ability to participate.

4. For a student with disabilities, the home instruction shall be consistent with the student's individualized education plan (IEP) to the extent appropriate and shall meet the Core Curriculum Content Standards. When the provision of home instruction will exceed 30 consecutive school days in a school year, the IEP team shall convene a meeting to review and, if appropriate, revise the student's IEP.

5. For a student without disability, the home instruction shall meet the Core Curriculum Content Standards, and the requirements of the district board of education for promotion to the next grade level. When the provision of home instruction will exceed 60 calendar days, the school physician shall refer the student to the child study team for evaluation, pursuant to N.J.A.C. 6A:14.

(d) During all periods of instruction delivered in a student's home, the student's parent or other adult who has been designated by the parent shall be present.

New Rule, R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Former N.J.A.C. 6A:16-10.1, Student placement, was recodified to N.J.A.C. 6A:16-10.2.

Amended by R.2014 d.047, effective March 17, 2014.
See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Amended by R.2015 d.158, effective October 5, 2015.
See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

In the introductory paragraph of (a), substituted a comma for a dash following "enrolled student" and a comma for a hyphen following "21"; and added (d).

6A:16-10.2 Home or out-of-school instruction for a general education student for reasons other than a temporary or chronic health condition

(a) The district board of education shall provide instructional services to an enrolled general education student at the student's home or other suitable out-of-school setting under the following conditions:

1. The student is mandated by State law and rule for placement in an alternative education program, but placement is not immediately available;
2. The student is placed on short- or long-term suspension from participation in the general education program; or
3. A court order requires the student to receive instructional services in the home or other out-of-school setting.

(b) The school district shall provide services no later than five school days after the student has left the general education program.

(c) The school district in which a student resides shall be responsible for the costs of providing instruction in the home or out-of-school setting either directly, or through online services, including any needed equipment, or through contract with another board of education, educational services commission, jointure commission, or approved clinic or agency.

(d) The services shall meet the following minimum standards:

1. The school district shall establish a written plan for delivery of instruction and maintain a record of instructional services and student progress.
2. The teacher providing instruction shall be a certified teacher.
3. The teacher shall provide one-on-one instruction for no fewer than 10 hours per week on three separate days of the week and no fewer than 10 hours per week of additional guided-learning experiences that may include the use of technology to provide audio and visual connections to the student's classroom.
4. The instruction shall meet the Core Curriculum Content Standards and the district board of education's requirements for promotion and graduation.

(e) During all periods of instruction delivered in the student's home, the student's parent or other adult who has been designated by the parent shall be present.

Amended by R.2005 d.297, effective September 6, 2005.

See: 37 N.J.R. 1570(a), 37 N.J.R. 3295(b).

Technical changes to (a)2; and updated N.J.A.C. cite in (b)8.

Recodified in part from N.J.A.C. 6A:16-10.1 and amended by R.2006 d.366, effective October 16, 2006.

See: 38 N.J.R. 2294(a), 38 N.J.R. 4411(c).

Section was "Student placement". Section combined with former N.J.A.C. 6A:16-10.2, Service requirement, and substantially amended.

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

Rewrote (e).

Case Notes

An Administrative Law Judge concluded that a county board of education had violated the rights of the minor son of the petitioners by imposing a long-term out-of-school suspension on him without providing a formal hearing and written notice in compliance with N.J.A.C. 6A:16-7.3 and by failing to provide home instruction within five days of the start of that suspension as required by N.J.A.C. 6A:16-10.2(b). Even though the suspension as originally imposed was a short-term suspension that was governed by the more lenient standards in N.J.A.C. 6A:16-7.2 (and petitioners did not claim that the board had violated that provision), once the suspension was extended beyond the original five-day term by the administration, the board had a duty to comply with the applicable regulations. Petitioners were also entitled to relief in the form of an order requiring the board to expunge their son's records so that they reflected only the original five-day suspension. L.K. & A.K. ex rel. L.K. v. N. Burlington Cnty. Reg'l Bd. of Educ., OAL Dkt. No. EDU 6071-12, AGENCY Dkt. No. 92-4/12, 2014 N.J. AGEN LEXIS 38, Initial Decision (January 27, 2014).

SUBCHAPTER 11. REPORTING POTENTIALLY MISSING, ABUSED, OR NEGLECTED CHILDREN AND ATTEMPTED OR COMPLETED SUICIDE

6A:16-11.1 Adoption of policies and procedures

(a) The district board of education shall develop and adopt policies and procedures for school district employees, volunteers, or interns to provide for the early detection of missing, abused, or neglected children through notification of, reporting to, and cooperation with appropriate law enforcement and child welfare authorities pursuant to N.J.S.A. 18A:36-25 and 25.2, N.J.S.A. 9:6-8.10, and N.J.A.C. 6A:22-4.1(d). At a minimum, the policies and procedures shall include:

1. A statement indicating the importance of early detection of missing, abused or neglected children;
2. Provisions requiring school district employees, volunteers, or interns to immediately notify designated child welfare authorities of incidents of alleged missing, abused, and neglected children.
 - i. The person having reason to believe that a child may be missing or may have been abused or neglected may inform the principal or other designated school official(s) prior to notifying designated child welfare authorities if the action will not delay immediate notification.

ii. The person notifying designated child welfare authorities shall inform the principal or other designated school official(s) of the notification, if such had not occurred prior to the notification;

(1) Notice to the principal or other designated school official(s) need not be given when the person believes the notice would likely endanger the reporter or student involved or when the person believes the disclosure would likely result in retaliation against the student or in discrimination against the reporter with respect to his or her employment;

3. Provisions requiring the principal or other designated school official(s) to notify designated law enforcement authorities of incidents of potentially missing, abused, or neglected child situations.

i. The school district shall identify the school district official(s) and his or her designees responsible for reporting to the designated law enforcement authorities.

ii. The school district policies and procedures shall be consistent with the memorandum of agreement between education and law enforcement authorities pursuant to N.J.A.C. 6A:16-6.2(b)13.

iii. Law enforcement authorities shall be notified about all reports by employees, volunteers, or interns working in the school district made pursuant to (a)2 above;

(1) The notification to designated law enforcement authorities on behalf of a student attending a receiving school shall be made to the law enforcement authorities identified in the receiving school's memorandum of agreement as required by N.J.A.C. 6A:16-6.2(b)13;

4. Under no condition shall the school district's policy require confirmation by another person to report the suspected missing-, abused-, or neglected-child situation;

5. Provisions for school district cooperation with designated child welfare and law enforcement authorities in all investigations of potential missing, abused, or neglected children including the following:

i. Accommodations permitting the child welfare and law enforcement investigators to interview the student in the presence of the school principal or other designated school official.

(1) If the student is intimidated by the presence of the school representative, the student shall be requested to name an employee, volunteer, or intern working in the school district whom he or she feels will be supportive and who will be allowed to accompany the student during the interview;

ii. Scheduling interviews with an employee, volunteer, or intern working in the school district who may have information relevant to the investigation;

iii. The release of all records of the student who is the subject of the investigation that are deemed relevant to the assessment or treatment of a potentially missing, abused, or neglected child pursuant to N.J.S.A. 18A:36-19 and 9:6-8.40 and allowable under the Family Education Rights and Privacy Act (FERPA), 34 CFR Part 99;

iv. The maintenance, security, and release of all confidential information about potential missing, abused, or neglected child situations in accordance with N.J.S.A. 18A:36-19, N.J.S.A. 9:6-8.40, and N.J.A.C. 6A:32-7;

(1) All information regarding allegations of potentially missing, abused, or neglected children reported to authorities about an employee, volunteer, or intern working in the school district shall be considered confidential and may be disclosed only as required to cooperate in investigations pursuant to (a)2 and 3 above or by virtue of a court order.

(A) Records pertaining to such information shall be maintained in a secure location separate from other employee personnel records and accessible only to the school district chief school administrator or his or her designee;

v. The release of the student to child welfare authorities while school is in session when it is necessary to protect the student or take the student to a service provider.

(1) Removal shall take place only after the principal or his or her designee has been provided, either in advance or at the time removal is sought, with appropriate documentation that the child welfare authority has already removed, or has appropriate authority to remove, the student from his or her home, as specified in N.J.S.A. 9:6-8.27 through 8.30; and

vi. The transfer to another school of a student who has been removed from his or her home by designated child welfare authorities for proper care and protection pursuant to N.J.S.A. 9:6-8.28 and 8.29;

6. A provision for the establishment of a school district liaison to designated child welfare authorities to act as the primary contact person between schools in the school district and child welfare authorities with regard to general information sharing, the development of mutual training and other cooperative efforts;

7. A provision for designating a school district liaison to law enforcement authorities to act as the primary contact person between schools in the school district and law enforcement authorities, pursuant to N.J.A.C. 6A:16-6.2(b)1, consistent with the memorandum of understanding, pursuant to N.J.A.C. 6A:16-6.2(b)13.

i. The designation of the school district liaison shall be consistent with the policies and procedures established by the district board of education for ensuring cooperation between school and law enforcement officials, pursuant to N.J.A.C. 6A:16-6.2(b)1;

8. Provisions for training employees, volunteers, and interns working in the school district on the school district's policies and procedures for reporting allegations of missing-, abused-, or neglected-child situations.

i. All new employees, volunteers and interns working in the school district shall receive the required information and training as part of their orientation;

9. Provisions regarding due process rights of an employee, volunteer, or intern working in the school district who has been named as a suspect in a notification to child welfare and law enforcement authorities regarding a missing-, abused-, or neglected-child situation.

i. Temporary reassignment or suspension of an employee, volunteer, or intern working in a school district named as a suspect pursuant to (a)2 above shall occur only if there is reason to believe that the life or health of the alleged victim or other student is in jeopardy due to continued contact between the school employee, volunteer, or intern and the student.

ii. All references to a notification to the designated child welfare authorities of a potential missing-, abused-, or neglected-child situation involving a school district

employee shall be removed from the employee's personnel records immediately following the receipt of an official notice from child welfare authorities that the allegation was unfounded pursuant to N.J.S.A. 18A:6-7a; and

10. A statement that prohibits reprisal or retaliation against any person who, in good faith, reports or causes a report to be made of a potential missing-, abused-, or neglected-child situation pursuant to N.J.S.A. 9:6-8.13.

(b) The district board of education shall develop and adopt policies and procedures for school district employees, volunteers, or interns with reasonable cause to suspect or believe that a student has attempted or completed suicide, to report the information to the Department of Human Services, Division of Mental Health and Addiction Services, in a form and manner prescribed by the Division of Mental Health and Addiction Services pursuant to N.J.S.A. 30:9A-24.a.

Repeal and New Rule, R.2007 d.184, effective June 4, 2007.

See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

Amended by R.2014 d.047, effective March 17, 2014.

See: 45 N.J.R. 987(a), 46 N.J.R. 505(a).

Rewrote the section.

Administrative correction.

See: 46 N.J.R. 2405(b).

Administrative correction.

See: 47 N.J.R. 781(d).

Amended by R.2015 d.158, effective October 5, 2015.

See: 47 N.J.R. 569(a), 47 N.J.R. 2492(b).

In (b), substituted "completed" for "contemplated".