

CHAPTER 28

SPECIAL EDUCATION

Authority

N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Source and Effective Date

R.1994 d.127, effective February 10, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 28, Special Education, expires on August 10, 2000. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

Chapter 28, Special Education, was filed and became effective August 5, 1970 as R.1970 d.95. See: 2 N.J.R. 47(d), 2 N.J.R. 72(a). Revisions were filed and became effective September 22, 1972 as R.1972 d.185. See: 4 N.J.R. 156(a), 4 N.J.R. 262(a). Further revisions were filed and became effective August 18, 1975 as R.1975 d.253. See: 7 N.J.R. 248(a), 7 N.J.R. 407(c). Further amendments were filed and became effective March 17, 1976 as R.1976 d.88. See: 8 N.J.R. 174(b). Further amendments were filed and became effective April 21, 1976 as R.1976 d.120. See: 8 N.J.R. 220(a). Further amendments became effective November 10, 1977 as R.1977 d.464. See: 9 N.J.R. 507(a), 10 N.J.R. 6(a). Further revisions were filed and became effective on December 13, 1977 as R.1977 d.464. Further revisions were filed and became effective August 11, 1978 as R.1978 d.277. See: 10 N.J.R. 225(b), 10 N.J.R. 383(a). Further amendments were filed and became effective September 20, 1982 as R.1982 d.316. See: 14 N.J.R. 617(a), 14 N.J.R. 1054(a). This chapter was repealed and a new chapter was filed and became effective July 16, 1984 as R.1984 d.306. See: 15 N.J.R. 1981(a), 16 N.J.R. 1970(a). Subchapter 11, Special Education Pilot Project, was adopted as R.1988 d.148, effective April 4, 1988. See: 20 N.J.R. 14(a), 20 N.J.R. 796(a). Pursuant to Executive Order No. 66(1978), Chapter 28 was readopted as R.1989 d.239, effective April 10, 1989. See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Pursuant to Executive Order No. 66(1978), Chapter 28 was readopted as R.1994 d.127. See: Source and Effective Date. Subchapter 12, Outcomes-Based Innovative Project, was adopted as a part of R.1994 d.127, but effective April 4, 1994. See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b). See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6:28-1.1 General requirements

(a) The rules in this chapter, adopted by the State Board of Education, supersede all existing rules pertaining to pupils with educational disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all pupils with educational disabilities, as defined herein, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

2. Ensure the provision of special education and/or related services;

3. Ensure that the rights of pupils with educational disabilities and their parents are protected;

4. Assist public and private agencies providing educational services to pupils with educational disabilities; and

5. Ensure the evaluation of the effectiveness of the education for these pupils.

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to pupils with educational disabilities.

1. Programs and services shall be provided to pupils ages three through 21.

2. Programs and services may be provided by a district board of education at their option to pupils below the age of three and above the age of 21.

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of disabled children below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1. Be provided a public expense, under public supervision and with no charge to the parent(s);

2. Be administered, supervised and provided by appropriately certified professional staff members;

3. Be located in approved facilities that are accessible to the disabled; and

4. Meet all requirements of this chapter.

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent(s);

2. Be administered, supervised and provided by appropriately certified professional staff members;

3. Be located in approved facilities that are accessible to the disabled or in early intervention programs approved according to N.J.A.C. 6:28-10.1; and

4. Meet all requirements of this chapter.

(f) Each district board of education, independently or through joint agreements, shall employ child study teams, speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

(g) When a district board of education provides its educational programs through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship, when all the pupils of one or more grades of a district board of education attend school(s) operated by other district boards of education, the receiving district board of education shall be responsible for determining the eligibility of those pupils and developing and implementing their individualized education programs.

2. When individual pupils are placed in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to pupils with educational disabilities.

(h) Each district board of education shall ensure that special classes, separate schooling or other removal of pupils with educational disabilities from the regular educational environment occurs only when the nature or severity of the educational disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(i) With the exception of pupils placed in nonpublic schools according to N.J.A.C. 6:28-6.5, all pupils with educational disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(j) Each district board of education shall ensure that placement of pupils with educational disabilities is based on their individualized education programs.

(k) Each district board of education shall ensure that the hearing aids worn by deaf and/or hard of hearing children in school are functioning properly.

(l) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.

(m) All public and private agencies which provide educational programs and services to pupils with educational disabilities shall maintain documentation demonstrating compliance with this chapter.

(n) Each district board of education shall provide mandated pupil records according to N.J.A.C. 6:3-6 to programs operated by the Departments of Human Services or Corrections when a pupil is placed in a State facility. The parent or adult pupil shall receive notice of release of these records to the facility. Permitted records according to N.J.A.C. 6:3-6 may be released only with consent.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Language added referencing Federal standards; at new (e) rule regarding provision of preschool education added and new subsections added, (i), (j), (k) and (n); recodification.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (g)1, changed "at least one grade" to "one or more grades". In (i), added reference excepting pupils placed in nonpublic schools. Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Amended to clarify that children attaining age three may receive their special education program in facilities that are approved by the State or in early intervention programs which are under contract with the Department of Education.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Law Review and Journal Commentaries

Substantive and Procedural Aspects of Special Education Litigation. Nathanya G. Simon, David L. Rosenberg, 154 N.J.Law. 31 (Mag.) (July 1993).

Tenure-Education-Educational Services Commissions. Judith Nal-lin, 137 N.J.L.J. No. 8, 57 (1994).

Case Notes

Appropriateness of individualized education program focuses on program offered and not on program that could have been provided. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Standard in evaluating individualized education program is whether program allows child "to best achieve success in learning." Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Individualized program was not appropriate where goals could be objectively evaluated. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Discussion of former regulatory scheme for education of handi-capped children. Henderson v. Morristown Memorial Hospital, 198 N.J.Super. 418, 487 A.2d 742 (App.Div.1985), certification denied 101 N.J. 250, 501 A.2d 922 (1985).

6:28-1.2 Plans for special education

(a) Each district board of education, jointure commission, county special services school district, educational services commission, approved private school and State-operated program for the educationally disabled shall develop a written plan for special education. The plan shall conform with the State plan for the educationally disabled. Plans for special education shall be submitted for approval to the Department of Education through its county offices as set forth in this section.

(b) The development of the plan for special education shall provide reasonable opportunities for the participation

of professional staff, parents, community members, disabled individuals and groups representing the disabled population. Parts one and three of the written plan shall be presented at a public meeting prior to approval by the district board of education or governing board. Copies of the plan shall be made available upon request.

(c) If there are any changes to parts one or three of the plan they shall be prepared in accordance with the requirements of this section.

(d) Part one of the plan shall be submitted for a period not to exceed three years and shall include:

1. A description of the needs assessment procedures used to determine special education and related services program needs;
2. A list of the identified needs;
3. The goals and objectives selected to address the identified needs;
4. The activities planned to attain those goals and objectives; and
5. The procedures to be used to evaluate the operation and effectiveness of these activities.

(e) Part two of the plan shall be submitted annually and shall include:

1. A report of the numbers of pupils with educational disabilities according to their classification, age, racial-ethnic background, sex, placement and related services;
2. A report of the staff employed to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to pupils with educational disabilities and the full-time equivalence of their assignments;
3. Any additional reports as required by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and
4. Assurances that the district board of education:
 - i. Complies with N.J.A.C. 6:28;
 - ii. Develops and adopts written policies and procedures according to N.J.A.C. 6:28-1.4;
 - iii. Implements the plan;
 - iv. Prepares the plan according to the requirements of this subchapter; and
 - v. Implements effective procedures for acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations, and similar projects and adopting, when appropriate, sound educational practices developed through these projects.

(f) Part three of the plan, a district-wide comprehensive system of personnel development, shall be submitted every three years with the exception of (f)1 below which shall be submitted annually and shall include:

1. A description of the personnel development completed during the previous year;
2. A description of the procedures used to determine personnel development needs, as well as the results of the procedures;
3. A description of the activities established to meet the identified needs; and
4. A description of the methods and procedures used to evaluate the operation and effectiveness of the personnel development activities.

(g) Upon request, additional reports shall be submitted to the Department of Education including, but not limited to, high school graduation requirements, and the numbers of pupils with educational disabilities exiting education, identified as potentially educationally disabled, classified, evaluated and receiving home instruction.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Added description of the process of submission of plan in three parts, changes in content requirements and new time frames.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Free appropriate education. *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and sociocultural group expectations.

"Adult pupil" means an emancipated minor or a person age 18 through 21, who is or was enrolled in the public school and who is not under legal guardianship.

"Approved private school for the handicapped" means an incorporated entity approved by the Department of Education according to N.J.A.C. 6:28-7.2 or 7.3 to provide special education and related services to pupils with educational disabilities placed by the district board of education responsible for providing their education.

CHAPTER 4

Case Notes

EQUALITY IN EDUCATIONAL PROGRAMS

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Educational activities and programs defined. *Playcrafters v. Teaneck Twp. Bd. of Ed.*, 177 N.J.Super. 66, 424 A.2d 1192 (App.Div.1981), affirmed 88 N.J. 74, 438 A.2d 543.

6:4-1.3 Policy development

(a) Each local school district shall develop a policy of equal educational opportunity to be adopted as a resolution by the board of education. The school district shall inform the community it serves of this resolution by publicizing it in an adequate manner, including but not limited to the district's customary methods of information dissemination.

(b) Each local school district shall develop two affirmative action programs or plans, which shall include timetables for corrective action to overcome the effects of any previous patterns of discrimination which may exist and a systematic internal monitoring procedure to ensure continuing compliance.

1. One such program or plan shall include, but need not be limited to, action as required by Section 5 (School and classroom practices) of this Subchapter.
2. Another program or plan shall include, but need not be limited to, action as required by Section 6 (Employment/contract practices) of this Subchapter.
3. The programs or plans shall be made available for review to all interested parties.

(c) Each local school district shall designate a member of its professional staff as the affirmative action officer to coordinate and implement the district's efforts to comply. The progress of the district in complying shall be reported by the superintendent to the board of education as it shall require.

(d) As part of its affirmative action programs or plans, each local school district shall arrange for or provide in-service training for school personnel on a continuing basis to identify and resolve problems arising from prejudice on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(e) Each board of education shall adopt and approve courses of study, instructional materials, and programs designed to eliminate discrimination and promote understanding and mutual respect between children of different races, colors, creeds, religions, sexes, ancestries, national origins or social or economic status. Community involvement in this process shall be encouraged.

SUBCHAPTER 1. GENERAL PROVISIONS

Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 18A:36-20 and were filed and became effective May 20, 1975, as R.1975 d.137. See: 7 N.J.R. 136(a), 7 N.J.R. 252(a).

6:4-1.1 Purposes and objectives

The New Jersey Constitution and implementing legislation guarantee each child in the public schools equal educational opportunity regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. To assure these basic rights the Commissioner of Education and the State Board of Education have developed these regulations which specifically implement N.J.S.A. 18A:36-20 and the State Board of Education resolution concerning sex equality in educational programs. These regulations have also been developed in conformity with relevant Federal and State statutes concerning discriminatory conduct.

6:4-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Discriminatory practices" means an action or failure to act based upon race, color, creed, religion, sex, ancestry, national origin or social or economic status.

"Educational activities and programs" means all activities and programs conducted or sponsored by the school either during the school day or after regular school hours.

"School" means every public elementary or secondary school, every regional school, every county vocational school, or any other public institution providing special or general educational services to students from grades kindergarten through 12.

(f) The local school district shall evaluate courses of study and instructional materials already in use to determine whether they are designed to achieve the objectives set forth in subsection (e) of this Section and shall supplement them as necessary where they are not so designed. As the use of such courses and materials is discontinued in the normal course of events, the local school district shall replace them with courses and instructional materials designed to meet the objectives set forth in subsection (e) of this section.

Case Notes

Special role of Commissioner; exclusive jurisdiction in complaints of discrimination in public school curriculum. Atty.Gen.F.O. 1975-No. 28.

6:4-1.4 Technical assistance

The commissioner or designee shall provide technical assistance to local school district for the development of policy guidelines, procedures and in-service training for school personnel so as to aid in the elimination of prejudice on the basis of race, color, creed, religion, sex, ancestry or social or economic status.

Case Notes

Requirements of affirmative action plan. In re Bd. of Ed., Trenton, Mercer Cty., 1979 S.L.D. 648, 1979 S.L.D. 707, affirmed 176 N.J.Super. 553, 424 A.2d 553 (App.Div.1980), affirmed 86 N.J. 327, 431 A.2d 808 (1981).

Special role of Commissioner; exclusive jurisdiction in complaints of discrimination in public school curriculum. Atty.Gen.F.O. 1975-No. 28.

6:4-1.5 School and classroom practices

(a) No student shall be denied access to or benefit from any educational program or activity solely on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(b) There shall be no differential requirements for completion of course offerings or courses of study solely on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(c) There shall be no discrimination against students because of pregnancy, childbirth, pregnancy-related disabilities, actual or potential parenthood, or family or marital status. A student shall not be excluded from any educational program or activity because of pregnancy or related conditions unless she so requests or a physician certifies that such exclusion is necessary for her physical, mental or emotional well-being. If she is excluded for these reasons, she must be provided with adequate and timely opportunity for instruction to continue or make up her schoolwork without prejudice or penalty.

(d) Public school students shall not be segregated on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

1. A local school district shall provide for separate restroom, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(e) No course, including but not limited to physical education, health, industrial arts, business, vocational or technical courses, home economics, music and adult education shall be offered separately on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

1. Portions of classes which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls, provided that the course content for such separately conducted sessions is the same.

(f) The athletic program, including but not limited to intramural, extramural, and inter-scholastic sports, shall be available on an equal basis to all students regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. The athletic program as a whole shall be planned to insure that there are sufficient activities so that the program does not deny the participation of large numbers of students of either sex.

1. The activities comprising such athletic program shall receive equitable treatment, including but not limited to staff salaries, purchase and maintenance of equipment, quality and availability of facilities, scheduling of practice and game time, length of season and all other related areas or matters.

2. A school may choose to operate separate teams for the two sexes in one or more sports and/or single teams open competitively to members of both sexes, so long as the athletic program as a whole provides equal opportunities for students of both sexes to participate in sports at comparable levels of difficulty and competency.

(g) School personnel shall not use tests, procedures or other guidance and counseling materials which are differentiated or stereotyped on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(h) When informing students about possible career, professional and/or vocational opportunities, school personnel shall in no way restrict or limit the options presented to students on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

As amended. R.1977 d.274, eff. August 3, 1977.
See: 9 N.J.R. 307(b), 9 N.J.R. 416(a).

Case Notes

Regulation did not violate federal equal protection, State Constitution, law against discrimination, or statute prohibiting gender discrimination in education. B.C. v. Cumberland Regional School District, 220 N.J.Super. 214, 531 A.2d 1059 (App.Div.1987).

"Consent" means that a parent having legal responsibility for educational decision making or the adult pupil has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; understands and agrees in writing to the implementation of this activity; and understands that the granting of consent is voluntary and may be revoked at any time.

"Department of Education" means the State Board of Education, the Commissioner of Education or its/his/her designee.

"Individualized education program" means a written plan developed at a meeting according to N.J.A.C. 6:28-3.6 which sets forth goals and measurable objectives and describes an integrated, sequential program of individually designed educational activities and/or related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the pupil's educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

"Native language" means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language.

"Nonpublic school" means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades, in which a pupil age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Nonpublic school pupil" means any pupil who is enrolled full time in a nonpublic school. A pupil who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent(s) resides.

"Parent(s)" means the natural parent(s), the legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

"Pupil" means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Pupil age" means the school age of a pupil as defined by the following:

1. "Age three" means the attainment of the third birthday. Children attaining age three shall have a free, appropriate public education available to them provided by the district board of education.

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cut off date by the district board of education. Pupils with educational disabilities attaining age five during the school year shall continue to be provided preschool services for the balance of that school year.

3. "Age 21" means the attainment of the twenty-first birthday by June 30 of that school year. Pupils with educational disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Pupil with an educational disability" means a pupil who has been determined to be eligible for special education and/or related services according to N.J.A.C. 6:28-3.5.

"Recreation" for pupils with educational disabilities means instruction to enable the pupil to participate in appropriate leisure time activities, including involvement in recreation programs offered by the district board of education and the facilitation of a pupil's involvement in appropriate community recreation programs.

"Related services" for pupils with educational disabilities means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, rehabilitation counseling, school nursing services, social work services, transportation, as well as any other appropriate developmental corrective and supportive services required for a pupil to benefit from education as required by the pupil's individualized education program.

"Special education" means specially designed instruction to meet the educational needs of pupils with educational disabilities including, but not limited to, subject matter instruction, physical education and vocational training.

"Transition services" means a coordinated set of activities for a pupil with educational disabilities, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Definitions to be consistent with Federal Act; deleted "least restrictive environment", "parental consent" and "preschool"; added "adult pupil", "approved private school for the handicapped", "consent", "nonpublic school" and "nonpublic school pupil".
Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In "Consent", added "legal responsibility for educational decision making".

Amended by R.1991 d.337, effective July 1, 1991.
See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Amended to change the definition of age three to the attainment of the third birthday.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Failure to gain timely approval for child study team does not defeat tenure rights gained in interim (citing former regulation). *Bisson v. Bd. of Ed., Alpha Boro., Warren Cty., 1978 S.L.D. 187.*

Definition of handicapped child under former N.J.A.C. 6:28-1.2. *T.A. v. Bd. of Ed., Edgewater Park Twp., Burlington Cty., 1973 S.L.D. 501.*

6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of pupils with educational disabilities from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8;
2. Prevention of needless public labeling of pupils with educational disabilities;
3. Compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-6;
4. Identification, location and evaluation of potentially educationally disabled pupils;
5. Provision of full educational opportunity to pupils with educational disabilities;
6. Participation of and consultation with the parent(s) of pupils with educational disabilities toward the goal of providing full educational opportunity to all pupils with educational disabilities ages birth through 21;
7. Provision of special services to enable pupils with educational disabilities to participate in regular educational programs to the maximum extent appropriate;
8. Development and implementation of individualized education programs according to N.J.A.C. 6:28-3.6 and 3.7;
9. Protection of pupils' rights in regard to evaluation and reevaluation procedures according to N.J.A.C. 6:28-2.5;
10. Placement of pupils with educational disabilities in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(d)5, and 4.1(i); and
11. Establishment and implementation of procedural safeguards according to N.J.A.C. 6:28-2.3, 2.6, and 2.7.

New Rule, R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a)1, deleted reference to 6:39-1.6.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

6:28-2.1 General requirements

(a) Each district board of education shall provide a free, appropriate public education program and related services for pupils with educational disabilities in the least restrictive environments according to N.J.A.C. 6:28-1.1(b)1.

(b) When a pupil with an educational disability between the ages of 16 and 21 voluntarily, and before receiving a high school diploma, leaves a public school program, he or she may reenroll at any time up to and including the school year of the pupil's twenty-first birthday.

(c) After parental consent for initial evaluation has been received, the district board of education shall ensure that within 90 calendar days, evaluation and determination of eligibility for special education and/or related services, and, if eligible, development and implementation of the individualized education program for the pupil shall be completed.

1. The individualized education program shall be written within 30 calendar days of the determination that the pupil is eligible for special education and/or related services; and

2. The individualized education program shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.

(d) Whenever parental consent for initial evaluation is requested, a parent(s) identifies to the district board of education a child age three to five as potentially preschool handicapped or a notice is sent to the parent(s) to reevaluate, the parent(s) shall receive a copy of the procedural safeguard rights under this subchapter and N.J.A.C. 1:6A.

(e) Upon determination of a pupil's eligibility for special education and/or related services, by the child study team, the parent(s) or adult pupil shall receive a copy of this chapter.

(f) Upon request by a parent or adult pupil, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3-2), and information regarding the availability of free and low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

(g) If the mediation according to N.J.A.C. 6:28-2.6 or due process hearing according to N.J.A.C. 6:28-2.7 involves initial admission to the public school of a child age three through 21, the child, with the consent of the parent(s), shall be placed in the public school program or a placement agreed to by the parent(s) and district board of education pending the outcome of the hearing.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference in (f) to legal services, old (g) and (h) deleted, new (g) added re: placement in public school.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (c), added 1 and designated existing language as 2. In (f), changed "parental request" to "request by a parent or adult pupil". In (g), child age "three" was "five".

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

At (c)2., 30 day time frame required; 90 day option deleted.

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school programs; determination of appropriate placement. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of study was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. *Milt v. East Windsor Regional School District*, 9 N.J.A.R. 159 (1986).

State Department of Human Services not a necessary party to special education placement determination; joinder of party denied due to lack of authority; consolidation denied as unqualified. *A.N. v. Clark Bd. of Ed.*, 6 N.J.A.R. 360 (1983).

Standing of foster parents (citing former regulations). *Orr v. Bd. of Ed., Caldwell-West Caldwell, Essex Cty.*, 1976 S.L.D. 264.

6:28-2.2 Surrogate parents

(a) Each district board of education or responsible State agency shall ensure that the rights of a pupil are protected through the provision of an individual to act as surrogate for the parent and assume all parental rights under this chapter, when either:

1. The parent(s) cannot be identified according to N.J.A.C. 6:28-1.3;
2. The parent(s) cannot be located after reasonable efforts; or
3. The pupil is a ward of the State of New Jersey.

(b) Each district board of education or responsible State agency shall establish a method for selecting and training surrogate parents.

(c) The person serving as a surrogate parent shall have:

1. No interest that conflicts with those of the pupil he or she represents; and

2. Knowledge and skills that ensure adequate representation of the pupil.

(d) The person(s) serving as a surrogate parent may not otherwise be an employee of the local school district or responsible State agency. A surrogate parent may be paid solely to act in that capacity.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference to "responsible State agency" added throughout.

Case Notes

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school programs. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Regulation valid. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

6:28-2.3 Parental notice, consent, participation and meetings

(a) Consent shall be obtained:

1. Prior to initial evaluation; and
2. Prior to initial implementation of a special education program and/or related services resulting from (a)1. above.

(b) For those pupils classified as eligible for speech-language services, additional consent shall be obtained prior to initial evaluation by the child study team and/or implementation of a special education program and/or related services resulting from that identification.

(c) Written notice which meets the requirements of this section shall be provided to the parent(s) when a district board of education:

1. Proposes or declines to initiate or change the identification, classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;
2. Requests consent;
3. Plans to conduct a reevaluation; or
4. Approves or denies the written request of the parent(s) to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil.

(d) Written notice, according to (c)1 through 4 above, shall be provided to the parent(s) no later than 15 calendar days after making a determination and in no event less than 15 calendar days prior to the date for implementation, unless the parent(s) otherwise consents. If the parent(s) consents to implementation before the 15 days have elapsed, documentation of such consent shall be maintained.

(e) On receipt of any written parental request, written notice shall be provided to the parent(s) within 30 calendar days.

(f) Notice shall be written in language understandable to the general public and shall include:

1. A description of the action proposed or denied by the district board of education including:

- i. An explanation of why it is taking such action; and
- ii. A description of any options the district board of education considered and the reasons why those options were rejected;

2. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action; and

3. A copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents and/or adult pupils. A parent or adult pupil may refuse additional copies of the statement. District boards of education shall maintain documentation that the statement was made available each time written notice was provided to a parent and/or adult pupil.

(g) A district board of education shall take steps to ensure that the parent(s) is given the opportunity to participate in:

1. Evaluations of the pupil;
2. The determination of the pupil's eligibility for special education and/or related services;
3. The development of an individualized education program according to N.J.A.C. 6:28-3.6; and
4. The annual review.

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the pupil's individualized education program.

1. Each meeting shall include the following participants:

- i. The parent(s);
- ii. Teacher(s) having knowledge of the pupil's educational performance;
- iii. The pupil, where appropriate;
- iv. At least one member of the child study team; and

v. Certified school personnel identifying the pupil as potentially educationally disabled, the school principal or designee and other appropriate individuals if they choose to participate.

2. Parent(s) shall be notified in writing of meetings early enough to ensure that they will have an opportunity to attend.

3. Meetings shall be scheduled at a mutually agreed upon time and place.

4. Notice of meetings shall indicate the purpose, time, location and participants.

5. If the parent(s) cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation, including the use of individual or conference telephone calls. Documentation shall be maintained of all attempts to secure parental participation.

6. A meeting may be conducted without the parent(s) in attendance if the district board of education is unable to secure the participation of that parent(s).

(i) An adult pupil shall be given notice and participate in meetings according to (a) through (f) above.

(j) When requesting consent to conduct an initial evaluation or for initial implementation of a special education program and/or related services for an adult pupil, consent shall be obtained from the adult pupil and notice shall be provided to the adult pupil and his or her parent(s).

(k) Adult pupils shall be given a copy of this chapter and the procedural safeguards statement published by the New Jersey Department of Education upon attainment of the eighteenth birthday.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

(a) through (c) deleted; new (a) through (i) added.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Added new (a) and (b); redesignated existing (a) through (i) as (c) through (k), with revisions to (c), (f), (h), and (k).

Administrative Correction to (d): changed the cross reference from (a)1 through 5 to (c)1 through 4.

See: 22 N.J.R. 3365(a).

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Federal due process requirements (citing former N.J.A.C. 6:28-1.9). *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

Lack of proper notice to parents of board's placement decision under former N.J.A.C. 6:28-1.9; review meeting under former N.J.A.C. 6:28-1.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

6:28-2.4 Native language

(a) Written notice to the parent(s) and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and pupil unless it is not feasible to do so.

1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent(s).

2. The determination of the language or mode of communication and written rationale for its choice shall be documented in the pupil record.

3. If it is not feasible to translate the individualized education program or eligibility reports into another language or mode of communication, the professional(s) making this decision shall ensure and document that the parent(s) is given an English language copy of the report(s) and appropriate explanation of its contents in the language of the parent.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Word "justification" changed to "rationale" at (a)2. and "or mode of communication" added at (a)3.

6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of educationally disabled pupils shall:

1. Be selected and administered by the appropriate members of a multi-disciplinary team of professionals consisting of members of the child study team, the school physician and where appropriate, other specialists according to N.J.A.C. 6:28-3.5, each employing two or more appropriate evaluation procedures. At least one member of the multidisciplinary team shall be knowledgeable in the area of the suspected disability;

2. Be used by personnel certified and trained in the administration and interpretation of such procedures;

3. Have been validated for the purpose(s) for which they are administered;

4. Be selected and administered;

i. So that the pupil's cultural background and language abilities are taken into consideration; and

ii. In the pupil's native language or other mode of communication unless it is clearly not feasible to do so;

5. Be selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6. Be selected and administered so as not to be racially or culturally discriminatory;

7. Be conducted on an individual basis;

8. Use information from group tests only to supplement individual evaluations;

9. Consider the pupil's sociocultural background and adaptive behavior in home, school and community; and

10. Result in a written report which shall be dated and signed by the individual who originated the data.

(b) A parent may request an independent evaluation if there is disagreement with the evaluation provided by a district board of education.

1. Such independent evaluation(s) shall be provided at no cost to the parent(s) unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.

2. Any independent evaluation purchased at public expense shall:

i. Be conducted according to N.J.A.C. 6:28-3.4; and

ii. Be obtained from another public school district, Educational Services Commission, Jointure Commission or a clinic or agency approved under N.J.A.C. 6:28-5.

3. An independent medical evaluation may be obtained according to N.J.A.C. 6:28-5.1(c)3.

(c) Upon receipt of parental request, each district board of education shall provide information about where an independent evaluation may be obtained.

(d) Any independent evaluation submitted to the district child study team shall be considered in making decisions regarding special education and/or related services.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Clarified makeup of multi-disciplinary team and expanded procedure requirements.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a)5, added exception regarding "intended purpose of the testing".

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Case Notes

Mainstreaming with part-time one-on-one therapy found to be appropriate placement for pupil with severe hearing loss. Bonadonna v. Cooperman, 619 F.Supp. 401 (D.N.J.1985).

6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1. Attempts to resolve conflicts between the parent(s) and the district board of education prior to a request for a due process hearing are encouraged; however, a request for mediation is not a prerequisite to a hearing;

2. If either party is unwilling to participate in mediation, a request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education;

3. Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of pupils with educational disabilities; and

4. Each district board of education shall establish a mediation procedure consistent with this section.

(b) Mediation shall be provided as follows:

1. A request for mediation shall be made in writing to the superintendent of the local district, Child Study Supervisor of the Department of Education county office or the Director of the Division of Special Education, Department of Education with a copy to the other party. The mediation request shall specify the issue(s) in dispute and the relief sought;

2. A mediation conference shall be conducted within 20 calendar days after receipt of a written request at which time:

- i. Issues shall be determined;
 - ii. Options explored; and
 - iii. Mediation attempts made within the confines of New Jersey law and code;
3. The role of the mediator is not judgmental;
4. The mediation conference shall be:
- i. Informal; and
 - ii. Held at a time and place reasonably convenient to the parties in the dispute;

5. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made;

6. The mediator may terminate the mediation after at least one meeting if in his or her judgment the parties are not making progress toward resolving the issue(s) in dispute; and

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7(g).

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Formerly titled "Due process hearings"; mediation procedures delineated.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a), added text regarding mediation for children below the age of three; in (b)7, corrected cross-reference.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Reimbursement to parents of private school expenses denied. *Wexler v. Westfield Bd. of Ed.*, 784 F.2d 176 (3rd Cir.1986), certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49.

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the identification, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(b) The parent(s) or adult pupil may request a hearing after receiving written notice of a proposed or denied action or after 30 calendar days have elapsed from the date of a written request by the parent(s) or adult pupil for a change with regard to the pupil.

(c) The district board of education or public agency responsible for the development of the pupil's individualized education program may request a hearing when it is unable to obtain required consent to a proposed action and shall request a due process hearing if it denies the parent(s) or adult pupil's request for an independent evaluation.

(d) Due process hearings shall be conducted in the following manner:

1. A request for a due process hearing shall be made in writing to the Director of the Division of Special Education, Department of Education with a copy to the other party.

2. The Department of Education shall acknowledge receipt of the request and provide information regarding free and low cost legal services to the parent(s).

3. Upon receiving the Department of Education's acknowledgement, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A.

4. Within seven calendar days of receipt of the written request, the Department of Education shall conduct a conference.

i. The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses. Mediation will be available at the conference if both parties agree to participate.

ii. The district board of education shall ensure that the chief school administrator or his or her designee with the authority of the chief school administrator attends the conference.

iii. The conference shall be scheduled at a time and place reasonably convenient to the parties. Participation by the parent(s) is voluntary. Parent(s) may participate through the use of individual or conference calls.

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

v. If the conference results in settlement, the settlement shall be written and in compliance with New Jersey statute and rule.

vi. If the conference results in transmittal, the Department of Education representative will prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be immediately forwarded to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties. The Department of Education representative shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by a hearing officer at the request of either party. If the parent or adult pupil does not attend the conference and is not available by individual or conference call to schedule a hearing date, a date shall be assigned within the required timelines.

(e) Subject to adjournments granted by the hearing officer, a final decision shall be rendered not later than 45 days after the receipt of the request for a hearing.

(f) The decision of the administrative law judge is final, binding on both parties and to be implemented without undue delay, unless stayed according to N.J.A.C. 1:6A-5.4.

(g) Either party may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A. The request shall be supported by an affidavit. The applicant shall provide copies of the request to the other party.

1. Prior to transmittal of the hearing request to the Office of Administrative Law, application for emergency relief shall be made to the Director of the Division of Special Education, Department of Education. After transmittal of a request for a due process hearing, any application for emergency relief shall be made directly to the Office of Administrative Law.

(h) If the public agency responsible for implementing the individualized education program fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent(s). The request shall be made in writing to the Director of the Division of Special Education, Department of Education. On receipt of this request, implementation of the decision shall be assured according to Department of Education procedures.

(i) Pending the outcome of a due process hearing or any administrative or judicial proceeding, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (g) above.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Defined types of matters which are cause for due process hearing; at (b) detailed nature and steps of conference; recodification and new (f) added.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a), added text regarding due process hearing for children under three; in (b), deleted "district board of education" and added "adult pupil" and criteria for requesting a hearing; in new (c), stated when a public agency may request a hearing. Added new (d), (e) and (f), and redesignated existing (c) through (f) as (g) through (j), with revisions to (h), (i), and (j).

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

At (j) changed to comply with 34 CFR 300.513(a).
Amended by R.1993 d.393, effective August 2, 1993.
See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Law Review and Journal Commentaries

Education—Administrative Law—Disabilities. Judith Nallin, 134 N.J.L.J. No. 15, 70 (1993).

Case Notes

Administrative law judge lacked jurisdiction to conduct "due process" hearing to determine financial responsibility of State Department of Human Services for special education costs of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Superior Court, Law Division did not have jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

School district has burden of proving that proposed individualized education program is appropriate. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Parents awarded private education reimbursement following improper placement by child study team entitled to interest on expenses from date of disbursement; counsel fee award not permitted (citing former N.J.A.C. 6:28-1.9). *Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty.*, 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

6:28-2.8 Disciplinary action

(a) Pupils with educational disabilities are subject to the same district board of education disciplinary policies and procedures as nondisabled pupils, unless the pupil's individualized education program includes exemptions to those policies or procedures. The individualized education program shall be implemented, with the following exception:

1. Prior to effecting any discipline which would result in a significant change in placement, the child study team shall conduct a reevaluation according to N.J.A.C. 6:28-3.7.

(b) The following standards shall be used in determining if a proposed discipline constitutes a significant change in placement:

1. If the proposed discipline involves expulsion or suspension for an indefinite period of time or for more than 10 consecutive school days, the expulsion or suspension constitutes a significant change in placement.

2. If the proposed discipline involves suspension of more than 10 non-consecutive school days, the suspension shall be reviewed to determine if it creates a pattern of exclusion which constitutes a significant change in placement.

(c) When a pupil with an educational disability is suspended, the principal shall forward, at the time of suspension, written notification and description of the reasons for such action to the parent(s) with a copy to the case manager. Such notification shall occur prior to the suspension if this action would result in the pupil being suspended for more than 10 days in the school year. The case manager shall review the status of the pupil in order to:

1. Determine if the suspension results in a significant change in placement;

2. Document the review and the determination made; and

3. If the suspension would result in a significant change in placement:

i. Immediately advise the principal that a reevaluation shall be conducted prior to the suspension; and

ii. Initiate a reevaluation.

(d) On completion of the reevaluation, the child study team shall determine if the pupil's behavior was primarily caused by his or her educational disability and, if so, whether the pupil's current educational placement is appropriate.

1. If the pupil's behavior is determined to be primarily caused by the pupil's educational disability, the district may not discipline the pupil.

2. If it is determined that the pupil's behavior is not related to his or her educational disability, the district board of education may discipline the pupil. However, at no time shall the district board of education cease educational services to that pupil.

(e) Upon making each of the determinations specified in (b), (c) and (d) above, the child study team shall prepare and forward to the principal and the parent(s) or adult pupil a written statement setting forth their conclusions and their recommendations, if any, and a statement that mediation or a due process hearing may be requested according to N.J.A.C. 6:28-2.6 or 2.7.

(f) If there is ongoing peril of physical harm to self or others or of substantial disruption to the educational process, and the suspension would result in a significant change in placement, the pupil may be temporarily suspended while the district immediately seeks emergency relief.

(g) Before a noneducationally disabled pupil can be considered for expulsion by a district board of education, the district board of education shall obtain consent from the parent or adult pupil for evaluation and the child study team shall conduct an initial evaluation according to N.J.A.C. 6:28-3.4 to determine eligibility.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Added new (d) prohibiting suspension for more than 10 school days unless emergency relief is granted.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

In (a), "district board of education . . . policies"; replaced (a)1. and 2. with text regarding "individualized education program"; replaced text in (b) through (e) with new evaluation standards; added new (f) and redesignated old (f) as (g); deleted old (g).

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Case Notes

Juvenile was not denied effective assistance of counsel in delinquency adjudication for serious offenses where evidence of guilt was overwhelming. State in Interest of S.T., 233 N.J.Super. 598, 559 A.2d 861 (A.D.1989).

6:28-2.9 Pupil records

(a) All pupil records shall be maintained according to N.J.A.C. 6:3-6.

(b) The parent(s), adult pupil or their designated representative shall be permitted to inspect and review the contents of the pupil's records maintained by the district board of education under N.J.A.C. 6:3-6 without unnecessary delay and before any meeting regarding the individualized education program.

(c) Any consent required for pupils with educational disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6:28-1.3 "Consent" and 2.3(a).

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Old (b)1.-3. deleted pertaining to steps in appealing contents of records.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (c) added referencing "consent" rules.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Due process hearing held to contest child study team's proposal to remove child from residential school into home and local school programs; determination of appropriate placement. Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty., 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Federal due process requirements (citing former N.J.A.C. 6:28-1.9). Levine v. State Dept. of Institutions and Agencies, 84 N.J. 234, 418 A.2d 229 (1980).

No parental right to pupil records under Right to Know Law absent governing regulations from State Board of Education (citing former N.J.A.C. 6:28-2.4). Robinson v. Goodwin, 1975 S.L.D. 6.

Local board policy to permit parental access to classification records only by way of oral, interpretive conferences proper exercise of board's discretion (citing former N.J.A.C. 6:28-1.3 and 2.4). D.N. Sr. v. Bd. of Ed., Closter Boro., Bergen Cty., 1974 S.L.D. 1332.

6:28-2.10 Least restrictive environment

(a) Each public agency of education shall ensure that:

1. To the maximum extent appropriate, a pupil with an educational disability is educated with children who are not educationally disabled;

2. Special classes, separate schooling or other removal of a pupil with an educational disability from the pupil's regular class occurs only when the nature or severity of the educational disability is such that education in the pupil's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;

3. A full continuum of alternative placements according to N.J.A.C. 6:28-4.2 is available to meet the needs of pupils with educational disabilities for special education and/or related services;

4. Pupils with educational disabilities are placed in appropriate programs in the least restrictive environment;

5. Placement of pupils with educational disabilities is provided in appropriate educational settings as close to home as possible;

6. Consideration is given to:

i. Whether the school district has made reasonable efforts to accommodate the child in a regular classroom with supplementary aids and services;

ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and

iii. The potentially beneficial or harmful effects which a placement may have on the pupil with educational disabilities or the other pupils in the class.

7. When the individualized education program does not describe specific restrictions, the pupil is educated in the school he or she would attend if not educationally disabled; and

8. To the maximum extent appropriate each pupil with an educational disability participates in regular classes, health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra-curricular activities.

New Rule, R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability"; amended to comply with 34 CFR 300.550(b)(1), 300.553 and 300.512(c).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Amended by R.1994 d.334, effective July 5, 1994.

See: 26 N.J.R. 1422(a), 26 N.J.R. 2787(a).

Amended by R.1995 d.228, effective May 1, 1995.

See: 27 N.J.R. 416(c), 27 N.J.R. 1792(a).

Case Notes

State board's guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void as improper rulemaking. Bd. of Ed., Plainfield, Union Cty. v. Cooperman, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) affirmed as modified 105 N.J. 587, 523 A.2d 655 (1987).

SUBCHAPTER 3. SERVICES

6:28-3.1 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who:

1. Shall evaluate, after parental consent for initial evaluation has been received, and participate in the determination of eligibility of pupils for special education and/or related services;
2. Shall coordinate the development, monitor and evaluate the effectiveness of the individualized education programs;
3. May deliver appropriate related services to pupils with educational disabilities;
4. May provide preventive and support services to nondisabled pupils;
5. May provide services to the general education staff regarding techniques, materials and programs for pupils experiencing difficulties in learning. Services include, but are not limited to, the following:

- i. Consultation with school staff and parents; and
- ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

(b) A child study team shall consist of a school psychologist, a learning disabilities teacher-consultant and a school social worker. For pupils ages three to five, the study team shall include a speech correctionist or speech-language specialist. All members of the child study team shall be employees of a district board of education, have an identifiable, apportioned commitment to the local school district and shall be available during the hours pupils are in attendance.

(c) The child study team shall act in consultation with a school physician when considering medical diagnostic services and with any other professional staff member(s) or consultant(s) deemed appropriate by the child study team, the parent(s) or the chief school administrator.

(d) At least one member of the child study team shall be knowledgeable about placement options for pupils with educational disabilities according to N.J.A.C. 6:28-4.

(e) One member of the child study team shall be designated as the case manager for each pupil with an educational disability.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

New (d) added.

Administrative Correction to (a)1: changed "referral" to "initial evaluation".

See: 22 N.J.R. 3365(a).

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

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Case Notes

A guidance counsellor is not automatically a member of the child study team, which consists of the school psychologist, social worker and a learning disabilities teacher-consultant (citing former N.J.A.C. 6:28-1.3). Childs v. Union Twp. Bd. of Ed., 3 N.J.A.R. 163 (1980), affirmed per curiam Dkt. No. A-3603-80 (App.Div.1982).

6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be identified, located and evaluated through programs operated by or through contracts under the responsibility of the Department of Health according to P.L. 1992, c.155.

(b) These procedures shall include criteria to identify pupils who may be experiencing physical, sensory, emotional, communication, cognitive or social difficulties.

(c) The identification procedures shall provide for participation of instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.

(d) Potentially educationally disabled pupils considered to require services beyond those available within the regular public school program shall be identified to the child study team.

(e) For a child who is identified to the district board of education at least 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if the pupil is determined to be eligible, develop and make available an individualized education program. This shall be completed not later than the date on which the child attains age three.

(f) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

(g) When identification of a potentially educationally disabled pupil is made by an individual other than the parent, the child study team shall make a determination whether or not to conduct an initial evaluation and provide the parent(s) with written notice of this determination within 30 days of the identification.

(h) Interventions in the regular public school program to alleviate educational problems shall be provided to the pupil unless the pupil's educational problem(s) is such that direct identification to the child study team can be supported and documented. Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. The parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.

(i) When parental consent for initial evaluation is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(j) The parent(s) may make a written request for an evaluation of his or her child which shall be forwarded to the child study team.

(k) Audiometric screening shall be conducted for every pupil identified to the child study team according to N.J.A.C. 6:29-5.

(l) Vision screening shall be conducted by the school nurse for every pupil identified to the child study team.

(m) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally disabled pupil for whom a district board of education is responsible, the district board of education shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent for initial evaluation according to this subchapter.

Amended by R.1985 d.209, effective May 6, 1985.
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) Added text: "Children below age ... Department of Education."

(d) Added text: "Simultaneously with such ... through (h)."

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Old (d) deleted, new (d) added regarding children who will be age three and who are enrolled in an early intervention program.

Amended by R.1991 d.337, effective July 1, 1991.
See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Added new (e) and changed deadlines for identifying determining eligibility.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "handicapped" changed to "disabled".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-3.3 (Reserved)

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodification and new (c) requiring written request, new (e) regarding vision screening for all pupils referred and at (f) added minimum requirement of observation and within 30 days.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

References to "district board of education" changed for consistency throughout.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "handicapped" changed to "disabled".

Repealed by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Section was "Referral".

6:28-3.4 Evaluation

(a) Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate.

(b) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay consistent with the timelines established in N.J.A.C. 6:28-2.1 and shall include assessment in all areas of the suspected disability.

(c) The chief school administrator or designee shall request that the parent(s) provide information to the child study team to be considered as part of the evaluation data.

(d) An initial evaluation shall consist of an assessment by a school psychologist, a learning disabilities teacher-consultant, a school social worker and a physician employed by the school. The child study team evaluation shall include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the child study team member reporting. Each initial evaluation of the pupil by the child study team shall:

1. Consider the requirements for eligibility for special education and/or related services;
2. Be used to determine instructional needs of the pupil;
3. Consider any relevant medical condition in evaluating the pupil's instructional needs;
4. Include pertinent information from the pupil's parent(s), the pupil's teacher(s) and other relevant persons;
5. Include, where appropriate, or required, the use of a standardized test(s) which shall be:
 - i. Individually administered;
 - ii. Valid and reliable;
 - iii. Normed on a representative population; and
 - iv. Scored as either standard scores with a standard deviation or norm referenced scores with a cutoff score; and
6. Include functional assessment as follows:

i. A minimum of one structured observation by each child study team member in other than a testing session;

ii. An interview with the pupil's parent(s);

iii. An interview with the teacher(s) identifying the potentially educationally disabled pupil;

iv. A review of the pupil's developmental/educational history including records and interviews;

v. A review of interventions documented by the classroom teacher(s) and others who work with the pupil; and

vi. One or more informal measure(s) which may include, but not be limited to:

- (1) Surveys and inventories;
- (2) Analysis of work samples;
- (3) Trial teaching;
- (4) Self report;
- (5) Criterion referenced tests;
- (6) Curriculum based assessment; and
- (7) Informal rating scales.

(e) Each initial evaluation shall include the following assessments:

1. A comprehensive health appraisal for pupils ages three through 21 shall be performed by a physician employed by the district board of education.

i. The comprehensive health appraisal shall include, but not be limited to, an assessment of prenatal, perinatal and postnatal factors, as well as developmental and early childhood illnesses and injuries and a review of health screenings.

ii. The physician employed by the district board of education shall examine the pupil, including all body systems, and write a summary indicating the effect of any current health problem or medical treatment on the pupil's learning.

iii. If the parent(s) of the pupil chooses to employ a private physician, a report of this comprehensive health appraisal shall be completed on a form developed by the school physician.

iv. The school nurse shall review and summarize all other available health information regarding the pupil and transmit it to the child study team.

2. A psychological assessment shall be the responsibility of a school psychologist employed by the district board of education and shall include an appraisal of the current cognitive, social, adaptive and emotional status of the pupil.

3. An educational assessment shall be the responsibility of a learning disabilities teacher-consultant employed by the district board of education and shall include an evaluation and analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be the responsibility of a school social worker employed by the district board of education and shall include an evaluation of the pupil's adaptive social functioning and emotional development and of the family, social and cultural factors which influence the pupil's learning and behavior in the educational setting. The social assessment shall include communication with the pupil and his or her parent(s).

5. For children ages three to five, a speech and language assessment shall be the responsibility of a speech correctionist or speech-language specialist employed by the district board of education. The assessment shall include observation of the pupil, communication with the parent(s) and an evaluation and analysis of speech and language development.

(f) The child study team members shall prepare written reports of the results of each of their assessments. The reports must include a statement regarding relevant behavior noted during the observation of the pupil and the relationship of that behavior to the pupil's academic functioning.

(g) Evaluation by additional specialists may be required as listed in N.J.A.C. 6:28-3.5(d).

(h) The requirements for evaluation by the child study team do not apply to a pupil confined at home or to a hospital for 60 calendar days or less by a physician or to a pupil with a speech or language problem when the nature of that problem does not warrant a comprehensive evaluation by a child study team.

(i) If the reports and evaluations of other New Jersey public school district child study team members, Department of Education approved clinics or agencies, Educational Services Commissions or Jointure Commissions or professionals in private practice are accepted by members of the child study team, such acceptance shall be noted in writing and shall become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

(j) By June 30 of a pupil's last year in a program for the preschool handicapped, the child study team shall reevaluate and, if appropriate, classify according to N.J.A.C. 6:28-3.5.

Amended by R.1987 d.36, effective January 5, 1987.

See: 18 N.J.R. 1771(a), 19 N.J.R. 76(a).

(j)4 added.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Old (c) deleted, remaining text recodified and requirement added at (d)5. regarding speech language assessment of three to five year olds.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Revisions made to (a), (f) and (h).

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

At (d) expanded requirements regarding the use of functional and standardized tests in child study team evaluations; at (f) amended to comply with 34 CFR 300.543.

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Equal educational opportunity to institutionalized persons. *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

Classification issues explained. *R.D.H. v. Bd. of Ed., Flemington-Raritan Regional School District, Hunterdon Cty.*, 1975 S.L.D. 103, 1975 S.L.D. 111, 1976 S.L.D. 1161.

Classification and psychiatric evaluation. *D.I. v. Neumann*, 1974 S.L.D. 1006.

6:28-3.5 Determination of eligibility

(a) When an initial evaluation is completed, a meeting according to N.J.A.C. 6:28-2.3(h) shall be convened. The child study team shall attend. The purpose of the meeting shall be to:

1. Determine whether the pupil is eligible for special education and/or related services; and

2. If eligible, determine a single classification category as defined in (c) below.

- i. For pupils age five through 21, when a pupil's assessment data suggest multiple handicapping conditions but do not meet the criteria for the classification of multiply handicapped, the classification category that best describes the pupil's educational status and needs shall be assigned. Additional behavior or conditions and individual program and/or service needs shall be included in the individualized education program.

- ii. For pupils age three through five who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services, the classification of preschool handicapped shall be assigned.

(b) When a speech-language evaluation is completed, a meeting shall be held to determine eligibility for speech-language services. Participants in the meeting shall be the speech correctionist or speech-language specialist, the parent(s) and at least one of the following:

1. A teacher having knowledge of the pupil's educational performance;

2. Another speech correctionist or speech-language specialist; or

3. Other school personnel qualified to provide or supervise special education.

(c) Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. When the pupil has been classified as perceptually impaired according to (d)8ii below the summary shall include a statement of whether the pupil has a specific learning disability and the basis for making that determination. The summary shall include a statement that the perceptual impairment is not the result of environmental, cultural or economic disadvantage.

(d) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, a teacher having knowledge of the pupil's educational performance, parent(s) and, if they choose to participate, the school principal and staff members identifying the potentially educationally disabled pupil. Classification according to the following definitions shall be based on all evaluations conducted:

1. "Auditorily handicapped" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i and ii below. Evaluations by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech correctionist or speech-language specialist are required.

- i. The pupil is impaired in processing linguistic information through hearing, with or without amplification; and

- ii. The loss of hearing may be permanent or fluctuating and adversely affects the pupil's education.

2. "Autistic" means a pervasive developmental impairment characterized by (c)2i, ii, and iii below. An evaluation by a certified speech correctionist or speech-language specialist and an evaluation by a physician trained in neurodevelopmental assessment is required.

- i. Social-emotional and communication development impaired in ways that are not merely predictable from cognitive and/or sensory impairment(s);

- ii. Extreme aberrant responses to one or more aspects of the environment, such as insistence on sameness, resistance to change, stereotypic behaviors, lack of responsiveness to others or repetitive movements; and

- iii. Onset in infancy or childhood.

3. "Chronically ill" means a health condition such as tuberculosis, cardiac condition, leukemia, asthma, seizure disorder or other medical disability which makes it impractical to receive adequate instruction through a regular school program. Evaluation by the school physician or his or her review and written acceptance of the medical report of another physician is required. The school nurse

shall assist in the accumulation of the data necessary to determine eligibility.

4. "Communication handicapped" means impaired native speech or language which is outside the range of acceptable variation, adversely affects a pupil's educational performance and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by (d)4i or ii below. An evaluation by a certified speech correctionist or speech-language specialist is required.

i. "Communication handicapped" means a severe speech or language disorder which interferes with the ability to use oral language to communicate;

ii. "Eligible for speech-language services" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or speech-language specialist. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(h).

5. "Emotionally disturbed" means the exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance and shall be characterized by (d)5i or ii below. An evaluation by a psychiatrist experienced in working with children is required.

i. An inability to build or maintain satisfactory interpersonal relationships;

ii. Behaviors inappropriate to the circumstances, a general or pervasive mood of depression or the development of physical symptoms or irrational fears.

6. "Mentally retarded" means cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature being demonstrated in home, school and community settings, and characterized by one of the following:

i. "Educable" means a level of cognitive development and adaptive behavior in home, school and community settings that are moderately below age expectations with respect to all of the following:

(1) The quality and rate of learning;

(2) The use of symbols for the interpretation of information and the solution of problems;

(3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Trainable" means a level of cognitive development and adaptive behavior that is severely below age expectations with respect to all of the following:

(1) The ability to use symbols in the solution of problems of low complexity;

(2) The ability to function socially without direct and close supervision in home, school and community setting;

(3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

7. "Multiply handicapped" means the presence of two or more educationally disabling conditions which interact in such a manner that programs designed for the separate disabling conditions will not meet the pupil's educational needs. All evident educational disabilities shall be documented. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions which forms the basis for the classification of a pupil as "multiply handicapped." Evaluation by all specialists required in this subsection for the separate disabling conditions being considered for the determination of "multiply handicapped" are required.

8. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally disabling condition or environmental, cultural or economic disadvantage and is characterized by (d)8i or ii below.

i. "Neurologically impaired" means a specific impairment or dysfunction of the nervous system or traumatic brain injury which adversely affects the education of a pupil. An evaluation by a physician trained in neurodevelopmental assessment is required.

ii. "Perceptually impaired" means a specific learning disability manifested by a severe discrepancy between the pupil's current achievement and intellectual ability in one or more of the following areas:

(1) Basic reading skills;

(2) Reading comprehension;

(3) Oral expression;

(4) Listening comprehension;

(5) Mathematic computation;

(6) Mathematic reasoning; and

(7) Written expression.

9. "Preschool handicapped" means those children age three through five who have an identified disabling condition and/or a measurable developmental impairment who require and would benefit from special education and related services.

10. "Orthopedically handicapped" means a condition which, because of malformation, malfunction or loss of bones, muscle or body tissue, necessitates special education and/or related services. An evaluation by a physician qualified to conduct an orthopedic evaluation is required.

11. "Socially maladjusted" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined in (d)5 above. If determined necessary by the child study team, an evaluation by a psychiatrist experienced in working with children is to be obtained.

12. "Visually handicapped" means an inability to see within normal limits as characterized by (d)12i or ii below. An evaluation by a specialist qualified to determine visual disability is required. Visually handicapped pupils eligible for special education and/or related services shall be reported to the Commission for the Blind and Visually Impaired.

i. "Blind" means a loss of acuity or field restriction so great that a pupil cannot rely on sight to learn.

ii. "Partially sighted" means a field restriction or loss of visual acuity which adversely affects a pupil's education, but which does not warrant classification of a pupil as "blind." A partially sighted pupil is able to use sight to learn.

Public Notice: The Superior Court, Appellate Division invalidated N.J.A.C. 6:28-3.5(d) and (e)8.

See: 17 N.J.R. 2464(b).

Amended by R.1987 d.36, effective January 5, 1987.

See: 18 N.J.R. 1771(a), 19 N.J.R. 76(a).

Deleted (d) and amended (e)8 and recodified (d)8 to comply with decision in *In re Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158 (App.Div. 1985)* invalidating former (d) and (e)8.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Added requirement at (a)2., i, ii that single classification must be made and at new (c) determination must be made collaboratively; changed references from "speech correction" to "speech language services".

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Revised definitions of "chronically ill" and "eligible for day training".

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Definition of "Autistic" added.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

At new (b) at least three participants at eligible meetings in compliance with federal mandate; (c)8i added traumatic brain injury; (d)8ii amended to comply with 34 CFR 300.54 and 300.543.

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

Former N.J.A.C. 6:28-3.5(e)8 defining "pre-school handicapped" set aside as impermissibly narrowing statutory language and frustrating statutory policy. In re: Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272 (App.Div.1985).

Reimbursement to parents of private school expenses denied. *Wexler v. Westfield Bd. of Ed.*, 784 F.2d 176 (3rd Cir.1986), certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49 (1986).

Former regulations silent on reimbursement to parents. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Proper classification under former N.J.A.C. 6:28-1.2(g) of multiply handicapped pupil. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Expulsion for disorderly and disruptive behavior. *J.P. v. Bd. of Ed., Matawan-Aberdeen Regional School District*, 1979 S.L.D. 382, 1979 S.L.D. 389.

Treatment of mainstreaming concept under former N.J.A.C. 6:28-2.1. *O'Lexy v. Bd. of Ed., Deptford Twp., Gloucester Cty.*, 1972 S.L.D. 641.

New York resident's child, domiciled in New Jersey, not entitled to New Jersey free education. *V.R. v. Bd. of Ed., Hamburg Boro., Sussex Cty.*, 2 N.J.A.R. 283 (1980).

6:28-3.6 Individualized education program

(a) The individualized education program shall be written upon completion of the child study team's evaluation according to the timelines in N.J.A.C. 6:28-2.1(c), and prior to the pupil's placement in a special education program.

(b) The individualized education program shall be developed with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and any additional persons required to attend the meeting according to N.J.A.C. 6:28-2.3(h).

(c) When a pupil has been classified as eligible for speech-language services or the school physician has determined a pupil with an educational disability needs home instruction, the individualized education program meeting shall be as follows:

1. For pupils classified eligible for speech-language services, the meeting shall include the same participants as required by N.J.A.C. 6:28-3.5(b). When appropriate, the pupil shall attend the meeting.

2. Other certified school personnel and the principal or designee may participate in the meeting.

3. When a pupil with an educational disability has been determined by the school physician to need home instruction, a meeting shall be conducted to review and

revise the individualized education program according to (j) below.

(d) With the exception of an individualized education program for a pupil classified as eligible for speech-language services, the individualized education program shall include, but not be limited to:

1. A statement of the pupil's eligibility for special education and/or related services;

2. A statement of current educational status, which describes the pupil's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;

3. A statement of annual goals which describes the educational performance expected to be achieved under the pupil's individualized education program. Annual goals shall be related to the special education and/or regular education curriculum;

4. A statement of objectives which describes specific measurable steps between the current educational status and the annual goals; and

5. A description of the pupil's educational program which includes:

i. A rationale for the type of educational program and placement selected;

ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs;

iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of a pupil with an educational disability in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the regular education program shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil;

iv. A description of exemptions from regular education program options including testing programs, core course proficiencies and State and local graduation requirements which includes a rationale for the exemptions;

v. Reasons why the individualized education program goals and objectives do not include the proficiencies measured by the High School Proficiency Test and the requirement to demonstrate mastery of curriculum proficiencies for pupils exempted from these requirements;

vi. A statement of the alternate requirement for each exemption from State and local high school graduation requirements. The individualized education program shall identify which alternative requirements must be achieved by the pupil with an educational disability to qualify for the State endorsed diploma issued by the school district;

vii. For pupils with educational disabilities age 14 and over, or younger, if deemed appropriate, annual goals and objectives shall be related to the post/secondary outcomes. Transition services shall be based on the individual pupil's needs, taking into account the pupil's preferences and interests and shall include:

(1) Instruction;

(2) Community experiences;

(3) The development of employment and other post-school adult living objectives; and

(4) If appropriate, acquisition of daily living skills and functional vocational evaluation.

viii. If the participants in the individualized education program meeting determine that transition services shall not be needed in one or more of the specified areas in (d)5vii(1) through (3) above, the individualized education program shall include a statement to that effect and the basis upon which the determination was made.

ix. A statement of and rationale for the length of time the pupil is expected to be in a special education program including the length of the school day and an extended academic year, when appropriate;

x. A statement specifying the language to be used for instruction, if other than English;

xi. A statement which describes the special education and/or related services, including the frequency and duration of services and the date when they will begin;

xii. A statement describing the roles of specific school personnel and their responsibilities for implementing the various aspects of the individualized education program;

xiii. The criteria, procedure and schedule to determine if the pupil's goals and objectives are being met;

xiv. Any exemptions from local disciplinary policies and/or procedures;

xv. Any specialized equipment or materials;

xvi. Instructional strategies fitted to the pupil's learning style; and

xvii. Techniques and activities designed to support the personal and social development of the pupil.

(e) The individualized education program for the pupil classified as eligible for speech-language services shall include (d)1, 2, 3, 4, and 5i, ii, iii, x, xi, xiii, xv, and xvi above. When appropriate, (d)5vii, xii, and xvii shall be included. The statement of the current educational status in (d)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall identify the pupil with an educational disability to the child study team.

(f) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parent(s) or district board of education shall meet to review and revise the individualized education program and determine placement as specified in this subchapter.

1. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in a preschool program.

2. The annual review shall be completed by June 30 of an educationally disabled pupil's last year in an elementary school program and shall include input from the staff of the secondary school.

(g) Signatures of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

(h) When the parent(s) declines participation in an individualized education program meeting or is in disagreement with the recommendations, the remaining participants shall develop a written individualized education program in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained or a due process hearing decision is issued. For other than initial implementation of special education, consent is not required. The parent(s) shall be provided written notice according to N.J.A.C. 6:28-2.3.

(i) During a 21 year old educationally disabled pupil's last year in an educational program, a meeting shall be held including the parent(s), the case manager, the pupil, if appropriate, and other individuals as appropriate to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended.

(j) School personnel, adult pupils and the parent(s) of a pupil with an educational disability shall be allowed to use an audio-tape recorder during the individualized education program meetings.

Amended by R.1985 d.209, effective May 6, 1985.
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(e)5ii(1): deleted text and substituted new.
Amended by R.1987 d.358, effective September 8, 1987.
See: 19 N.J.R. 1033(b), 19 N.J.R. 1641(c).

Added new (e)5v and vi; renumber old v.-ix. to vii.-xi.
Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

IEP process language simplified, reference to governing N.J.A.C. cite added, requirement to provide transition preparation for pupils age 14 or over added at (c)5., vii. and old (l) replaced with new language.
Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Revisions made throughout the section the provision of meetings for determining IEPs and the conduct of such meetings.

Administrative correction to (c): changed "the" to "a".
See: 23 N.J.R. 59(c).

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Amended to streamline the IEP requirements for pupils classified eligible for speech-language services; clarified that post secondary outcomes shall be components in IEPs for pupils 14 and above; recodifications; amendments to comply with 34 CFR 300.344.

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Amended by R.1994 d.334, effective July 5, 1994.
See: 26 N.J.R. 1422(a), 26 N.J.R. 2787(a).

Cross References

Graduation requirements, exemption of handicapped pupils, see N.J.A.C. 6:8-7.1(a)4.

Case Notes

Focus of appropriateness is on program offered and not on program that could have been provided. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Standard of appropriateness is whether program allows child "to best achieve success in learning." *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Program was deficient where its goals could not be objectively evaluated. *Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist.*, 116 N.J. 30, 560 A.2d 1180 (1989).

Parents awarded private education reimbursement following improper placement by child study team entitled to interest on expenses from date of disbursement. *Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty.*, 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

Regulations of the State Board of Education adopted. *New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services*, 89 N.J. 234, 445 A.2d 704 (1982).

Former regulations silent on reimbursement, although sanctioned by Commissioner. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Under former N.J.A.C. 6:28-4.3 and 4.8, a school board is responsible for residential costs when an appropriate nonresidential placement is not available. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Disparate treatment of neurologically versus perceptually impaired pupils (citing former regulations.). *M.D. v. Bd. of Ed., Rahway, Union Cty.*, 1976 S.L.D. 323, 1976 S.L.D. 333, 1977 S.L.D. 1296.

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(d)1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5(d)2 shall be required.

2. Reevaluation shall be conducted according to N.J.A.C. 6:28-3.4(c) and (h). Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(d)1 through 6.

3. Reevaluation shall be conducted when a change in classification or significant change in placement is being considered.

4. When the reevaluation is completed those members of the district board of education child study team who have participated in the reevaluation shall attend a meeting according to N.J.A.C. 6:28-2.3(h) to determine eligibility and if the pupil remains eligible for special education and/or related services, the basic plan of the individualized education program shall be developed.

New Rule, R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Clarification that an IEP must be developed if a pupil is classified and who shall participate in IEP meetings following a pupil's reevaluation.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Added required assessments for autistic pupils.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Corrected internal cites.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-3.8 Related services

(a) Related services shall be provided to a pupil with an educational disability according to his or her individualized education program and may include one or more of the following:

1. Counseling services shall be provided in the following manner:

i. Counseling services for a pupil with an educational disability shall be provided within the public schools during the school day by certified school psychologists, social workers or guidance counselors; and

ii. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.

2. Occupational and physical therapy shall be provided in the following manner:

i. Occupational and/or physical therapy shall be provided by educationally certified therapists; and

ii. A district board of education may contract with approved clinics and agencies for the provision of occupational and/or physical therapy.

3. Recreation shall be provided by certified school personnel.

4. Speech and language services for a pupil classified as other than "eligible for speech-language services", may be provided as a related service. Additional classification as "eligible for speech-language services" is not required.

5. Transportation shall be provided in the following manner:

i. The district board of education shall provide transportation as required in the individualized education program or as prescribed by the school physician. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school;

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school;

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a pupil assigned; and

iv. For handicapped pupils below the age of five, safety belts or restraint systems are required; and

6. Other related services as specified in the pupil's individualized education program.

(b) School personnel may give advice to parents regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-3.7, added references to "speech-language services".

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

6:28-3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services according to N.J.A.C. 6:28-3.2 through 3.7.

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:3-6; and
2. Facilitate the entry of the pupil into the local district program, as appropriate.

(c) For a pupil in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-3.8.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

N.J.A.C. reference corrected in (a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

SUBCHAPTER 4. PROGRAMS

6:28-4.1 General requirements

(a) Each district board of education shall provide educational programs and related services for pupils with educational disabilities required by the individualized education programs of those pupils for whom the district board of education is responsible.

(b) Special education programs shall be consistent with the special education plan submitted by the district board of education and approved by the Department of Education.

(c) A district board of education proposal to establish, change or eliminate special education programs or services shall be approved by the Department of Education through its county office.

(d) Appropriate written curricula shall be developed and appropriate materials shall be provided for pupils with educational disabilities.

(e) The length of the school day and the academic year of programs for pupils with educational disabilities shall be at least as long as that established for all pupils.

1. Programs for the preschool handicapped shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of pupil instruction.

2. An extended academic year program shall be comparable to the special education program offered during the regular academic year.

3. Educational programs for pupils classified as eligible for day training shall operate extended school year programs.

(f) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county office.

(g) Physical education services, specially designed if necessary, shall be made available to every pupil with an educational disability age five through 21, including those pupils in separate facilities.

(h) When a pupil with an educational disability transfers from one New Jersey school district to another, or when a pupil classified as educationally disabled by a State or local school district outside of New Jersey transfers into a New Jersey school district, and immediate review of the classification and individualized education program cannot be conducted, the pupil shall be immediately placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days.

(i) When the individualized education program of a pupil with an educational disability does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

1. When instruction in health, physical education, industrial arts, fine arts, music, home economics, and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of pupils with educational disabilities, the size of the groups and the age

range shall conform to the requirements for special class programs described in this subchapter.

(j) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-4 through 16 and this chapter.

(k) Each district board of education shall ensure that all pupils with educational disabilities have available to them the variety of educational programs and services available to nondisabled pupils.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Requirement for physical education services added; at (h) instructions for immediate placement of transfers added; limit of group size in classes in fine arts, music, home economics, sports etc. and new (k) added ensuring variety of programs.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Reference to vocational education deleted in (i)1.
Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.
See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Administrative Correction.
See: 25 N.J.R. 4743(b).

Case Notes

Former standard of service for local school bds. incorporated into the Federal Education of the Handicapped Act. Bd. of Educ. of E. Windsor Regional School v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Regulatory description of appropriate educational program being one in the least restrictive environment found to mean least even in which educational progress rather than regression can take place. Bd. of Educ. of E. Windsor Regional School District v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Focus in determining appropriateness of program is on program offered. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Petitioners' action to require local school board to pay residential costs and tuition retroactively denied. M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ., 9 N.J.A.R. 179 (1985).

Regulations contain standards for provision of remedial and auxiliary services to non-public school students; future contract for such services forbidden due to contractor's financial standing and fiscal practices. New Jersey Education Assn. v. Essex Cty. Educational Services Commission, 5 N.J.A.R. 29 (1981).

6:28-4.2 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of pupils with educational disabilities ages three through 21. Educational program options include the following:

1. Instruction in a regular class with all necessary and appropriate supports including, but not limited to, the following:

- i. Curricular or instructional modifications;
- ii. Supplementary instruction;
- iii. Speech-language services;
- iv. Resource center programs;
- v. Assistive technology including environmental adaptations;
- vi. Specialized instructional strategies;
- vii. Teacher aides; and
- viii. Related services.

2. A special class program in the pupil's local school district;

3. A special education program in the following settings:

- i. Another local school district;
- ii. A vocational and technical school;
- iii. A county special services school district;
- iv. An educational services commission; and
- v. A jointure commission;

4. Programs in hospitals, convalescent centers or other medical institutions;

5. A program operated by a department of New Jersey State government;

6. Vocational rehabilitation facilities;

7. An approved private school for the handicapped in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in an approved private school for the handicapped shall only be made with the prior written approval of the Department of Education through its county office;

8. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office, only when it is not appropriate to provide a special education program for a pupil with an educational disability according to N.J.A.C. 6:28-4.5;

9. An accredited nonpublic school which is not specifically approved for the education of pupils with educational disabilities according to N.J.A.C. 6:28-6.5;

10. Instruction in other appropriate settings according to N.J.A.C. 6:28-1.1(d) and (e); and

11. An early intervention program (which is under contract with the Department of Health) in which the child has been enrolled for the balance of the school year in which the child turns age three.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Referenced "private school for handicapped", deleted "privately operated special class".

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (a)9 added, an accredited nonpublic school.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Added new (b); the three program options available for preschool handicapped pupils.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Changes to reflect the change from "resource room" to "resource center program".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Amended by R.1995 d.228, effective May 1, 1995.

See: 27 N.J.R. 416(c), 27 N.J.R. 1792(a).

Case Notes

Former N.J.A.C. 6:28-4.3 upheld. *D.S. v. Bd. of Ed., East Brunswick Twp.*, 188 N.J.Super. 592, 458 A.2d 129 (App.Div.1983), certification denied 94 N.J. 529, 468 A.2d 184 (1983).

Jurisdiction of Juvenile and Domestic Relations Court to place a pupil in an appropriate educational program. *State in Interest of F.M.*, 167 N.J.Super. 185, 400 A.2d 576 (J.D.R.Ct.1979).

Although petitioners sought private school placement for their seven year old, classified as emotionally disturbed, the OAL judge determined that a self-contained, age appropriate, emotionally disturbed placement in respondent's school system was the appropriate placement for the child. *B.P. and E.P. Parents of J.P. v. City of Newark Bd. of Educ.*, 9 N.J.A.R. 190 (1986).

Petitioners' action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for their 13 year old son, classified as neurologically impaired, denied; finding that local board had attempted to provide a free appropriate education, with personalized instruction and sufficient support services to allow the child to benefit educationally. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

Parents not entitled to reimbursement for private school tuition following unilateral withdrawal of pupil from special education program. *Robinson v. Goodwin*, 1975 S.L.D. 6.

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

6:28-4.3 Program criteria: supplementary instruction, speech-language services and resource center programs

(a) Supplementary instruction and speech-language services provided to a pupil with an educational disability shall be in addition to the regular instructional program and shall meet the following criteria:

1. Speech-language services shall be given individually or in groups not to exceed three pupils;

2. Supplementary instruction shall be given individually or in groups not to exceed five pupils;

3. A teacher providing supplementary instruction shall be appropriately certified for the subject or level in which instruction is given according to the requirements of N.J.A.C. 6:11;

4. Supplementary and resource room instruction shall not be provided to pupils by the same teacher during the same instructional period; and

5. Speech-language services shall be provided by a certified speech correctionist or speech-language specialist.

(b) Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1. A pupil with an educational disability in a resource center program shall be enrolled on a regular class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource center program teacher and the regular class teacher(s) as described in the individualized education program.

2. The resource center teacher shall hold certification as teacher of the handicapped. If the resource center program solely serves pupils who are classified as visually handicapped, the teacher must be certified as a teacher of blind or partially sighted. If the resource center program solely serves pupils who are classified as auditorily handicapped, the teacher must be certified as a teacher of deaf and/or hard of hearing.

3. Resource center programs shall provide two types of instruction or service:

i. Instruction which replaces that provided in the regular class;

ii. Instruction which supports or supplements instruction initially provided by the regular class teacher; and

iii. Support and replacement instruction shall not be provided to pupils by the same teacher during the same instructional period.

4. Resource center program instruction may be provided in the pupil's regular class or in an approved separate resource room according to N.J.A.C. 6:22-5.4 and 5.5 as appropriate and indicated in the pupil's individualized education program.

5. Group sizes for pupils who receive support instruction in resource center programs shall not exceed the following:

i. In an approved separate resource room—five pupils;

ii. In the regular class, when the resource center teacher is present each instructional period that the subject is being taught;

(1) Preschool or elementary—eight pupils;

(2) Secondary—10 pupils;

iii. In the regular class, when the resource center teacher is present for some, but not all of the instructional periods that the subject is being taught—five pupils.

6. Support instruction provided in the pupil's regular class shall be at the same time and in the same activities as the rest of the class.

7. Group size for classified pupils who receive replacement instruction in class shall not exceed three pupils.

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. For a single content area:

(1) Preschool or elementary—six pupils; and

(2) Secondary—nine pupils.

(3) The group sizes in (b)8i(1) and (2) above may be increased by one-third with the addition of a classroom aide by obtaining the written approval of the Department of Education through its county office.

ii. For multiple (not more than three) content areas—four pupils.

9. The age span in an approved separate resource center program shall not exceed four years.

10. Replacement instruction in the regular class shall be for pupils normally enrolled in the class being served. Only a single content area shall be taught to the group. A pupil receiving in-class instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the pupil's individualized education program.

11. A resource center program teacher shall be provided time for consultation with appropriate regular education teaching staff.

12. A pupil may be provided resource center instruction according to the following limits:

i. Replacement or support instruction in a separate approved resource room shall be for not more than one half of the pupil's instructional day; and

ii. Replacement or support instruction in the regular class may be for up to the pupil's entire school day.

13. For State aid funding purposes, district boards of education shall count pupils with educational disabilities in resource center programs as resource room pupils according to N.J.S.A. 18A:7D-16.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Titled and recodified from N.J.A.C. 6:28-4.2(b)1. and 2., set maximum number of students for resource room teachers with other instructional duties.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

New subsection (b) regarding resource rooms and programs added; recodified (b) to (c) and established June 30, 1993 expiration date for resource room programs at (c). New subsection (d) added establishing resource center programs.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Amended by R.1994 d.334, effective July 5, 1994.

See: 26 N.J.R. 1422(a), 26 N.J.R. 2787(a).

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1. A pupil with an educational disability in a special class program shall be enrolled on a special class register;

2. Pupils shall be the primary instructional responsibility of a full-time special education teacher assigned to that class. Such teachers shall work with other teachers to whom the pupil with an educational disability may be assigned for portions of his or her educational program;

3. Depending on the educational disability(ies) of the pupils assigned to the special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted, and/or teacher of deaf or hard of hearing;

4. The age span in special class programs shall not exceed four years;

5. A special class program may not be approved as a kindergarten;

6. A special class program shall serve pupils who have the same classification. Class size shall not exceed the following:

i. Auditorily handicapped—eight pupils;

ii. Autistic—elementary—six pupils per classroom with a pupil to staff ratio of three to one (classroom aide required when the class size exceeds three);

iii. Autistic—secondary—nine pupils per classroom with a pupil to staff ratio of three to one (two classroom aides required for a class size of nine pupils);

iv. Chronically ill—15 pupils;

v. Communication handicapped—eight pupils;

- vi. Emotionally disturbed—eight pupils;
- vii. Mentally retarded, educable—12 pupils;
- viii. Mentally retarded, trainable—10 pupils;
- ix. Mentally retarded, eligible for day training—nine pupils (pupil to staff ratio of three to one);
- x. Multiply handicapped—eight pupils;
- xi. Neurologically impaired—eight pupils;
- xii. Orthopedically handicapped—10 pupils;
- xiii. Perceptually impaired—12 pupils;
- xiv. Preschool handicapped—eight pupils (classroom aide required);
- xv. Socially maladjusted—12 pupils; and
- xvi. Visually handicapped—eight pupils; and

7. With the exception of classes for autistic pupils and eligible for day training pupils, the above maximum class sizes may be increased no more than one-third with the addition of a classroom aide or a second classroom aide where one is already required by obtaining prior written approval from the Department of Education through its county office. No exceptions according to N.J.A.C. 6:28-4.6 shall be granted regarding class size for pupils classified as eligible for day training.

(b) Secondary special class programs shall meet the following criteria:

1. Programs shall be in schools in which any combination of grades six through 12 are contained;
2. A pupil with an educational disability enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil;
3. In secondary special class programs where the organizational structure is departmentalized for general education pupils:
 - i. Enrollment in secondary special class programs may be increased by one-half the maximum class size for pupils with the same classification as noted in (a)6 above;
 - ii. For instructional purposes:
 - (1) In all class groups comprised of pupils with a single classification, class sizes shall be according to (a)6 and 7 above; and
 - (2) In all class groups comprised of pupils with mixed handicaps, the group shall be limited to eight pupils with educational disabilities;

4. In addition to the requirement of (b)2 above, instruction may be provided in the following settings, as appropriate:

i. A class consisting solely of pupils with educational disabilities instructed by a regular education teacher where an adapted general education curriculum is used.

(1) In class groups comprised of pupils with a single classification, class sizes shall be according to (a)6 and 7 above.

(2) In class groups comprised of pupils with mixed handicaps, the group shall be limited to eight pupils with educational disabilities.

ii. A regular education class instructed by a subject area teacher.

(1) The number of pupils with educational disabilities enrolled on a special class register who can attend any given instructional period in such classes shall be limited to four if program modification is required; and

5. For class groups comprised of pupils with mixed handicaps, the maximum class size may be increased by no more than one-third with the addition of an aide.

(c) Secondary resource center programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education pupils.

(d) Vocational education programs shall meet the following criteria:

1. For the pupil placed in a vocational program outside of the local district, responsibility shall be as follows:

i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;

ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the individualized education program decisions; and

2. In vocational shop, and related academic programs class sizes shall be as follows:

i. For a class consisting of pupils with educational disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted. Approval shall be considered according to procedures specified by the Department of Education. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following pupil needs and instructional considerations:

- (1) Nature and degree of educationally disabling condition;
- (2) Interests, aptitudes and abilities of the pupil;
- (3) Functional level;
- (4) Employment potential;
- (5) Type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

(e) Secondary level pupils may be placed in vocational rehabilitation facilities according to the following:

1. Vocational rehabilitation facilities shall be approved by the New Jersey Department of Labor, the Division of Vocational Rehabilitation Services and the Department of Education, through its county offices, to provide vocational evaluation and work adjustment training only;
2. Placement shall be on a part-time basis. All other mandated instruction/services, as specified in the individualized education program shall be provided in an education program approved by the Department of Education; and
3. Placement in vocational rehabilitation facilities shall be made with prior written approval by the Department of Education through its county office.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Titled and recodified from N.J.A.C. 6:28-4.2(b)3. and 4.; maximum class size with aides established; criteria for placement in vocational rehabilitation facilities established.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to expand the definition of secondary programs to include grade six and to clarify how services are to be provided in secondary special class programs.

Amended by R.1991 d.337, effective July 1, 1991.
See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Established special education class sizes for the autistic.
Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.
See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Cross References

Graduation requirements, exemption of handicapped pupils, see N.J.A.C. 6:8-7.1(a)4.

6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence for at least a two week period of time, home instruction shall meet the following criteria:

1. Instruction shall be provided at the pupil's place of confinement;

2. The pupil shall be carried on an individual home instruction register;

3. Instructional services shall begin within seven calendar days after eligibility has been established;

4. The teacher providing instruction shall be appropriately certified as teacher of the handicapped or for the subject or level in which the instruction is given;

5. The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation. Pupils with educational disabilities may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(d)5iv;

6. Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days. When instruction is provided by direct communication to a classroom program by telephones, computer or television, this instruction shall be in addition to the basic five hours of instruction; and

7. Instruction may be provided for up to 60 calendar days in a school year. If the school physician believes that instruction for a longer period of time is indicated, identification shall be made according to N.J.A.C. 6:28-3.2 for determination by the child study team of eligibility for special education and/or related services.

(b) A pupil classified as educationally disabled shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1. Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

2. Approval may be obtained for a maximum of 60 calendar days at which time renewal of the request may be made. Each renewal of the approval may be granted for a maximum of 60 calendar days.

3. Paragraphs (a)2, 3, 4 and 5 above shall apply to the home instruction program of pupils classified by the child study team.

4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a teacher on at least three separate days.

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution for at least a two week period of time and determined by the school physician to need home instruction or classified by the child study team as educationally disabled, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission, State-operated facility, jointure commission or approved clinic or agency at the pupil's place of confinement;

2. Paragraphs (a)2, 3, 4, 5 and 7 above shall apply to the home instruction program; and

3. Individualized instruction shall be provided through either:

i. One to one instruction according to (a)6 above;

ii. Instruction to small groups. The number of hours of instruction for the group shall be determined by multiplying the number of pupils in the group by five. The pupil to staff ratio shall not exceed the limit set by N.J.A.C. 6:28-4.4(a)6; or

iii. When instruction is provided by direct communication to a classroom program by telephone, computer or television, this instruction shall be in addition to (c)3i or ii above.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a), 21 N.J.R. 2288(d).

Titled and recodified from N.J.A.C. 6:28-4.2(b)5. and 6.; minimum of 10 hours instruction per week for pupils confined to home and new criteria established for those confined to hospital, convalescent home or other medical institution.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Clarification of the exemption status of educationally handicapped pupils on home instruction and to allow the renewal of home instruction beyond maximum of 60 days.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-4.6 Exceptions

(a) Exceptions to the requirements of this chapter shall be:

1. Made only with prior written approval of the Department of Education through its county office;

2. For a period not to exceed one year;

3. Regarding class size or age range according to N.J.A.C. 6:28-4.4(a)4. An exception shall not be required regarding the provision of an extended academic year program.

(b) The county office shall:

1. Approve the exceptions incorporated in the pupil's individualized education program; or

2. Convene a meeting of the child study team and parent(s) to review the exceptions and individualized education program and to reach a consensus regarding the delivery of a free, appropriate public education. If it is determined that the granting of the exceptions would interfere with the delivery of a free, appropriate public education to the pupil, the county office may deny the exception.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-4.2(c) and expanded details of process by which county office grants exceptions.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to clarify that an exception is not required regarding the provision of an extended year program.

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-4.7 Transition

(a) Transition from an elementary program to the secondary program shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age. This determination shall be specified in the pupil's individualized education program according to N.J.A.C. 6:28-3.6.

(b) For pupils with educational disabilities age 14 and over, or younger, if determined appropriate, planning for transition to adulthood shall include the following:

1. The individualized education program shall be written in accordance with N.J.A.C. 6:28-3.6(d)5vii.

i. If an agency other than the district board of education fails to provide the transition services included in the pupil's individualized education program, the district board of education shall reconvene a meeting of the individualized education program participants. Alternative strategies to meet the pupil's transition objectives shall be identified.

2. Initial evaluation or reevaluation shall include assessment(s) to determine appropriate post-secondary outcomes;

3. The case manager shall be responsible for transition planning;

4. The individualized education program shall designate the person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate;

5. In addition to the required participants in an initial individualized education program meeting or an annual review meeting, the pupil with educational disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the individualized education program meeting. Notice of the meeting shall be provided to the participants according to N.J.A.C. 6:28-2.3(h)4;

6. If the pupil with educational disabilities does not attend the individualized education program*[s]* meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the pupil's preferences and interests are considered; and

7. If an agency invited to send a representative to the individualized education program meeting does not do so, the district board of education or public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-4.3.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (b) added to address the transition of educationally handicapped pupils to adult life.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Amended to comply with Section 602(a)(19) of the I.D.E.A. which requires district boards of education to reconvene an IEP meeting if an outside agency fails to provide a transition service for a pupil with educational disabilities.

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-4.8 Diplomas and graduation

(a) A pupil with educational disability who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program with the written approval of the chief school administrator. The individualized education program must specifically address these graduation requirements. The individualized education program shall specify which requirements would qualify the pupil with an educational disability for a State endorsed diploma issued by the school district responsible for his or her education.

(b) A pupil with an educational disability shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program has not included the range of proficiencies measured by the High School Proficiency Test and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.

(c) If a pupil attends a school other than that of the school district of residence which is empowered to grant a diploma, the pupil shall have the choice of receiving the diploma of the school attended or the diploma of the school district of residence.

(d) If a district board of education grants an elementary school diploma, a pupil with an educational disability who fulfills the requirements of his or her individualized education program shall qualify for a diploma.

(e) Pupils with educational disabilities meeting the standards for graduation according to this section, shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

Amended by R.1987 d.358, effective September 8, 1987.

See: 19 N.J.R. 1033(b), 19 N.J.R. 1641(c).

Added text to (b) "A handicapped pupil ... School Proficiency Test."

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-4.4.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to reinstate the requirement for written approval of the Chief School administrator for each exemption from the high school graduation requirements.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

SUBCHAPTER 5. APPROVED CLINICS AND AGENCIES

6:28-5.1 General requirements

(a) Clinics and agencies approved by the Department of Education may provide those contracted services to district boards of education delineated in this subchapter.

(b) In order to provide services to a district board of education according to these rules, clinics and agencies shall be approved annually by the Department of Education.

(c) Services which may be contracted shall be restricted to the following:

1. For public school pupils:

i. Independent child study team evaluations and/or child study team diagnostic services to supplement existing local district services;

ii. The related services of occupational therapy and physical therapy; and

iii. Home instruction.

2. For nonpublic school pupils:

i. Evaluation, determination of eligibility for special education and/or related services, classification and the development of an individualized education program;

ii. Supplementary instruction, speech correction and home instruction for pupils determined eligible for such services; and

iii. English as a second language according to N.J.A.C. 6:31-1.4 and compensatory education according to N.J.A.C. 6:8-1 for pupils eligible for such services.

3. Medical clinics and agencies approved by the New Jersey Department of Health or appropriate State agencies outside of New Jersey may conduct diagnostic medical services. These agencies do not have to obtain Department of Education approval nor do district boards of education have to receive prior approval of the Department of Education to purchase diagnostic medical services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from approved clinics and agencies with the prior written approval of the Department of Education through its county office according to the following:

1. A request for approval to purchase services shall include the proposed terms of the contract;
2. The district board of education shall be notified of approval or disapproval within 30 calendar days of the request; and
3. The approval shall be for one year.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Clarified "only" clinics and agencies approved by the Department can provide contracted services and added reference to "independent child study team evaluations . . ."

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to clarify that not only clinics and agencies may provide contracted services to districts.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Added home instruction to contracted services.

Case Notes

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation for the provision of auxiliary, diagnostic and therapeutic services to non-public school pupils, without seeking the review and approval of the State Board or the Commissioner. Atty.Gen.F.O.1981, No. 1.

6:28-5.2 Approval procedures

(a) Annual approval of clinics and agencies shall require, but not be limited to, submission and evaluation of the following:

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;
3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill;
 - i. All staff shall be appropriately certified or licensed;

ii. All educational certificates shall be recorded with the Department of Education through the county office in which the clinic or agency is located;

iii. Professional staff employed by a clinic or agency who work full time according to N.J.A.C. 6:3-1.13 for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment; and

iv. An employee of a district board of education shall not provide service as an employee of a clinic or agency to a pupil who is the responsibility of his or her employing district board of education;

4. A description of the facility or facilities in which services shall be provided including assurances that the facility meets applicable building and administrative code standards;

5. Fiscal information concerning the cost and method of payment for services;

6. Assurance of an adequate accounting system according to generally accepted accounting principles;

7. Assurance of a system for the collection, maintenance, confidentiality and access of pupil records which is according to N.J.A.C. 6:3-2; and

8. Assurance of the maintenance of a log, which includes but shall not be limited to, a list of services provided indicating the date, time, location and professional staff providing the service.

(b) Any clinic or agency denied approval by the Department of Education may appeal the annual approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6:24. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference added making approval on annual procedure.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to improve the monitoring of clinics and agencies.

SUBCHAPTER 6. SERVICES IN NONPUBLIC SCHOOLS

6:28-6.1 General requirements for programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) The district of residence, as required by Federal law and regulation, shall maintain responsibility for providing a free, appropriate public education for pupils enrolled in nonpublic schools.

(b) The district board of education in which the nonpublic school is located shall provide to nonpublic school pupils the programs and services required by this subchapter by itself, or through joint agreements with other district boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6:28-5.

(c) Specifications for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.

Amended by R.1985 d.209, effective May 6, 1985.
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) added text: "located within the district."
Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference to Statutory requirements and Federal law and regulation.
Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

(a) deleted; amended to clarify the rule applies only to nonpublic school pupils placed under P.L. 1977, c.192 and c.193.

Case Notes

Private schools required approval by Bureau of Special Education and Pupil Personnel under former N.J.A.C. 6:28-4.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation. *Atty.Gen.F.O.1981, No. 1.*

6:28-6.2 Provision of programs and services provided under N.J.S.A. 18A:46-1 et seq. and 18A:46-19.1 et seq.

(a) Identification, evaluation, determination of eligibility, development of individualized education programs and provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(b) English as a second language shall be provided according to N.J.A.C. 6:8-1.

(c) Compensatory education shall be provided according to N.J.A.C. 6:8-1.

(d) All programs and services required by this subchapter shall be provided only with parental consent.

(e) All procedural safeguards specified in N.J.A.C. 6:28-2 apply to nonpublic school pupils eligible for the services listed in (a) above.

(f) Personnel providing a program or service under this subchapter shall meet appropriate certification requirements. Personnel shall not be employed by the nonpublic school in which the pupil is enrolled with the exception of personnel providing the types of instruction listed in N.J.A.C. 6:28-5.1(c)2ii and iii.

(g) Programs and services for nonpublic school pupils shall be provided in facilities approved by the Department of Education through its county superintendent of schools according to N.J.S.A. 18A:46-5 and 18A:46-19.5.

(h) Public and nonpublic school pupils may be grouped for speech correction and the other instructional programs provided under this subchapter, when appropriate.

(i) When the provision of programs and/or services under this subchapter requires transportation, or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall provide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter by the district board of education.

(j) The district board of education in which the nonpublic school is located shall maintain all records of nonpublic school pupils receiving programs and/or services under this subchapter according to N.J.A.C. 6:3-6.

Amended by R.1985 d.209, effective May 6, 1985.
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(i) added text: "or the maintenance of vehicular classrooms," and "of the district in which the nonpublic school is located".

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-6.3 and formerly the "Definition" section.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Section retitled and exception added at (f).
Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "speech and language service" added.
Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Each district board of education shall provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds.

(b) Each district board of education shall maintain an accounting system for nonpublic programs and services according to procedures established by the Department of Education (N.J.S.A. 18A:46-8).

(c) At the close of each year, the district board of education shall report to the Department of Education the total district cost for programs and services provided under this subchapter.

(d) Each district board of education shall receive State aid for programs and services required by this subchapter for the succeeding school year as available from appropriated funds for nonpublic school programs and services.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-6.4, deleted reference to Statutory Authority for funding limits.
Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).
Section retitled.

Case Notes

Teacher did not accrue secondary seniority credits by providing statutorily mandated services in public school to parochial students. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation for the provision of auxiliary, diagnostic and therapeutic services to non-public school pupils, without seeking the review and approval of the State Board or the Commissioner. *Atty.Gen.F.O.1981, No. 1.*

6:28-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Annually, the district board of education shall submit to the Department of Education a report describing the programs and services provided under this subchapter.

(b) The end of the year report shall include the numbers of nonpublic school pupils provided each program or service and such other information as may be required by the Department of Education.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-6.5; added reference to "nonpublic school" pupil.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).
Section retitled.

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils

(a) According to N.J.S.A. 18A:46-14 pupils with educational disabilities may be placed in accredited nonpublic schools which are not specifically approved for the education of educationally disabled pupils with the consent of the Commissioner or by an order of a court of competent jurisdiction.

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the on-going, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a, b, c, d, e, f, g or h cannot be provided to this pupil;

3. The most appropriate placement for this pupil is this nonpublic school;

4. The program to be provided shall meet the requirements of the pupil's individualized education program;

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c, d, e, f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3)(A), (B) and (C), 3iii, iv and v, 5ii, 6:8-6.1(a), 6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(d)5iv.

i. All personnel providing either special education programs according to N.J.A.C. 6:28-4.3 or 4.4 or related services according to N.J.A.C. 6:28-3.8 shall hold the appropriate educational certificate for the position in which they function.

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting authority.

iii. All substitute teachers and aides providing special education and/or related services shall be employed according to N.J.A.C. 6:8-4.3(a)6ii.

6. The pupil shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6:29-4.2 and 6.6 and 6:28-1, 2, 3, and 4. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(d)5iv.

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and federal antidiscrimination statutes;

9. Written notice has been provided to the pupil's parent(s) regarding this placement which has included that:

i. The nonpublic school is not an approved private school for the handicapped and that the local school district assumes the ongoing monitoring responsibilities for the pupil's program;

ii. No suitable special education program could be provided to this pupil pursuant to N.J.A.C. 18A:46-14; and

iii. This is the most appropriate placement available to this pupil;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6:28, N.J.A.C. 1:6A and N.J.A.C. 6:3-6.

(c) In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the Administrative Law Judge assigned to the case when:

1. The Administrative Law Judge makes a factual determination that the certifications in N.J.A.C. 6:28-6.5(b) are met;

2. The district board of education and the parent(s) agree to a settlement of the matter which would include placement under N.J.S.A. 18A:46-14 and the Administrative Law Judge approves the settlement. Approval may be granted if the district board of education makes the certifications in N.J.A.C. 6:28-6.5(b). A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through its county office.

(d) The district board of education shall be responsible to monitor the pupil's placement at least annually to ensure the program's ongoing compliance with the certifications.

New Rule: R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Special education teachers certification required but teachers providing regular education programs may either hold the appropriate certificate or meet the personnel qualification standards of a recognized accrediting authority.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

**SUBCHAPTER 7. PROGRAMS BY
EDUCATIONAL SERVICES COMMISSIONS,
JOINTURE COMMISSIONS, REGIONAL DAY
SCHOOLS, COUNTY SPECIAL SERVICES
SCHOOL DISTRICTS, THE MARIE H.
KATZENBACH SCHOOL FOR THE DEAF,
PRIVATE SCHOOLS FOR THE
HANDICAPPED AND PUBLIC COLLEGE
OPERATED PROGRAMS FOR THE
HANDICAPPED**

6:28-7.1 General requirements

(a) Educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, private schools for the handicapped and public college operated programs for the handicapped shall obtain prior written approval from the Department of Education to provide programs for pupils with educational disabilities through contracts with district boards of education.

1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

3. Annual approval for private schools shall be obtained and shall include, but not be limited to, the provisions of N.J.A.C. 6:28-7.3.

(b) "District board of education" as used in this subchapter means the local district legally responsible for the pupil's education.

(c) Programs for pupils with educational disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding pupil placement shall be made according to N.J.A.C. 6:28-4.6. Providers of programs under this subchapter shall maintain documentation of this approval.

(d) Providers of programs under this subchapter shall prepare and submit a special education plan according to N.J.A.C. 6:28-1.2.

(e) The residential component of an approved private school for the handicapped shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the state in which the school is located.

(f) Out-of-state private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey pupils. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education based on demonstrated compliance with N.J.A.C. 6:28 and 6:20-4.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference added to "private schools for the handicapped and public college operated programs for the handicapped"; approval made annual; (e) deleted, new (e)-(g) added.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Deleted requirement at (g) setting forth composition of boards of directors for approved private schools for the handicapped.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Law Review and Journal Commentaries

Tenure-Education-Educational Services Commissions. Judith Nalin, 137 N.J.L.J. 57 (1994).

6:28-7.2 Approval procedures to establish or change a program

(a) Prior to the establishment or change of a program for pupils with educational disabilities an application shall be submitted to the Department of Education.

(b) The Department of Education shall determine if the program is needed or in conflict with an existing or planned program.

(c) The Department of Education shall notify the applicant of its decision no later than 90 calendar days after receipt of the application.

(d) An appeal of the decision to deny approval may be made to the Commissioner of Education according to N.J.A.C. 6:24.

(e) The application for approval to establish or change a program for pupils with educational disabilities shall include, but not be limited to:

1. A survey of need indicating the number, age range and classifications of pupils with educational disabilities to be served. This survey shall include, but not be limited to:

i. A listing of local school districts surveyed, indicating the number of pupils in need of the proposed programs/services; and

ii. A listing of existing approved programs, within the geographical area to be served, which currently serve pupils with the same or similar educational needs;

2. A rationale for each new program;

3. The projected program for each group of pupils with educational disabilities with the same educationally disabling condition including:

i. The objectives of the program;

ii. The organizational structure, including projected number of personnel by title and certification;

iii. The administrative policies and procedures;

iv. The nature and scope of the program and services to be offered and the number and type of pupils with educational disabilities to be served; and

v. A description of the proposed curriculum including a statement of philosophy, goals, objectives and instructional strategies;

4. A copy of the approval of the facility by the Department of Education through its county office including certification of health and fire approval;

5. An assurance that necessary emergency procedures will be followed; and

6. Additionally each private school shall submit:

i. An affidavit that its programs and services for pupils with educational disabilities are nonsectarian; and

ii. A copy of the certificate of incorporation.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

The requirement to submit an application six months prior to establishment or change was dropped to just the language "prior to"; "three months" changed to 90 calendar days for notification by Department of decision.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Deleted requirements setting forth composition of boards of directors for approved private schools for the handicapped.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

6:28-7.3 Annual approval procedures

(a) Annually each approved private school shall submit information including, but not limited to:

1. Program information:

i. Number of pupils to be served;

ii. Numbers and types of classes;

iii. Number of school days; and

iv. Daily hours in session;

2. Staffing information:

i. Staff roster including classes assigned and certification(s) held;

3. Fiscal information according to N.J.A.C. 6:20;

4. A copy of the certificates of health, fire, boiler inspections, occupancy and, if applicable, sewerage plant;

5. Assurance statement that necessary emergency procedures will be followed; and

6. An affidavit that its programs and services for the educationally disabled are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28, The Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and the Rehabilitation Act (U.S.P.L. 93-112 Section 504).

New Rule, R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Individuals with Disabilities Education Act replaced Education for All Children Act—Part B.

Case Notes

Action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for neurologically impaired child, denied. *M.B. Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

School board's failure to follow proper placement procedures deprived parents of free choice in making decision for non-public cost placement under former N.J.A.C. 6:28-4.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

6:28-7.4 Responsibilities of district boards of education

(a) The educational program of an educationally disabled pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

1. For pupils placed in programs described in N.J.A.C. 6:28-7.1(a), representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

(b) The placement of a pupil with an educational disability in a program as described in N.J.A.C. 6:28-7.1(a) shall be made only with the prior written approval of the Department of Education through its county office. Providers of programs under this subchapter shall maintain documentation of this approval.

1. A district board of education shall seek approval to place a pupil with an educational disability in such a program only when it can assure that the individualized education program can be implemented in that setting.

2. Prior to placement in a program, a representative of the district board of education and, if possible, the parent(s) shall visit the school.

3. If a pupil with an educational disability has available a free, appropriate education offered by a district board of education and the parent(s) chooses to place the pupil in a private school, neither the State nor the district board of education shall be responsible for the cost of the private school placement.

4. When a district board of education is able to demonstrate to the Department of Education through its county office that the individualized education program of a pupil with an educational disability cannot be provided by a public program or private day school program, the pupil may be placed in an approved residential private school which shall be at no cost to the parent(s). The district board of education shall be responsible for special education costs, room and board.

5. Placement of a pupil with an educational disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education costs.

i. When the pupil has been placed by a public agency empowered to make such placement, the placement shall meet the individualized education program requirements of the pupil.

ii. The chief school administrator or his or her designee shall participate with the public agency in the placement decision if the district board of education is to be responsible for the special education costs.

(c) If the approval of a private school for the handicapped is removed, a district board of education having a pupil with an educational disability placed therein, shall immediately begin seeking an alternative, appropriate placement for that pupil.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-7.3, added (c) regarding alternative placement.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

N.J.A.C. reference corrected.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Law Review and Journal Commentaries

Education—Administrative Law—Disabilities. Judith Nallin, 134 N.J.L.J. 70 (1993).

Case Notes

Jurisdiction to conduct "due process" hearing to determine financial responsibility for special education costs of blind, retarded child, was in Department of Education. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Disputes regarding proper residential placement of developmentally disabled citizens should be processed as "tested cases" under Administrative Procedure Act (APA). Superior Court, Law Division did not have jurisdiction. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

6:28-7.5 Provision of programs

(a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6:28-4 and to the pupil's individualized education program.

(b) Educational programs shall be open to observation at any time to the representatives of the sending district board of education and of the Department of Education.

(c) With prior written approval of the Department of Education, a school described in N.J.A.C. 6:28-7.1(a) may operate an extended academic year program.

(d) A provider of programs under this subchapter shall notify the Department of Education 90 calendar days prior to ceasing operation.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-7.4, added (d) 90 calendar day notice prior to ceasing operation.

6:28-7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any pupil with an educational disability from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference according to N.J.A.C. 6:28-3.6(f) which shall include participation of appropriate personnel from the receiving school. Fifteen calendar days prior to termination or withdrawal written notice shall be given by the parent(s), the district board of education or the school providing the program to the other parties.

(b) A pupil with an educational disability shall receive a diploma if the requirements of N.J.A.C. 6:28-4.8 are met.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-7.5, added correct N.J.A.C. cites. Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-7.7 Fiscal management

(a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual pupil placement approval.

(b) The district board of education shall establish a written contract for each educationally disabled pupil it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the pupil with an educational disability.

(c) Daily transportation costs shall be paid by the district board of education.

(d) Transportation for pupils in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6:78-1.3.

(e) All approved private schools for the handicapped shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6:20.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-7.6, deleted (e) and recodified (f) and extended submission of audit to November 1.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

6:28-7.8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-6 pertaining to pupil records. In addition:

1. All pupil records maintained by a provider under this subchapter shall be returned to the responsible district board of education when a pupil's program is terminated.

2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-6 shall be directed to the chief school administrator or his or her designee of the local school district having responsibility for the pupil with an educational disability.

3. The daily attendance record of all pupils in approved programs under this subchapter shall be maintained in registers provided by the Department of Education and made available to the district board of education upon request. Habitual tardiness or prolonged absences shall be reported to the chief school administrator of the local school district.

(b) Pupil progress reports shall be submitted at least three times a year or as stipulated in the contract.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Recodified from N.J.A.C. 6:28-7.7.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-7.9 Monitoring and corrective action

(a) The Department of Education shall monitor approved private schools for the handicapped according to N.J.A.C. 6:28-9.1. On site monitoring shall be conducted at least every five years.

(b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited to:

1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated in such areas as staff certification, facilities approval, business services according to N.J.A.C. 6:20-4 or submission and/or implementation of the corrective action plan.

i. An approved private school which is issued a conditional approval status may not accept new pupils;

2. The Department of Education may refuse to grant annual approval when chronic or systemic noncompliance is demonstrated; and

3. The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the pupils is in danger.

(c) An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6:24.

New Rule, R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS AND HUMAN SERVICES

6:28-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6:9 and the requirements of this chapter.

(b) All pupils with educational disabilities shall receive an educational program and/or related services based on an individualized education program. A pupil who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the individualized education program incorporated into the plan.

(c) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for general education pupils. Educational programs shall operate at least 220 days each year.

(d) When a pupil enters a State facility:

1. If the pupil is educationally disabled and an immediate review of the classification and individualized education program cannot be conducted, the pupil shall be placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days; or

2. If the pupil is not currently classified as educationally disabled, or if the State facility does not have current school records, the State facility shall review the pupil's educational status within 30 calendar days to determine if the pupil is potentially educationally disabled and if identification to the child study team is required.

(e) Each State facility shall develop a special education plan according to N.J.A.C. 6:28-1.2 which additionally shall include:

1. A list of all State and Federal funding sources;
2. A separate educational budget statement for each State facility.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Reference to State government replaced by Corrections and Human Services; disclaimer regarding GED, adult continuing education and college degree programs; (j) recodified to (k), new (j), (l), (m) added. Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (n) and (o) added.
Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.194, effective May 3, 1993.
See: 25 N.J.R. 400(a), 25 N.J.R. 1889(b).

Deleted references to pupils in State facilities as rules pertaining to such pupils are in a new chapter, N.J.A.C. 6:9.

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Case Notes

N.J.A.C. 6:28-8.1(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

6:28-8.2 Procedural safeguards

(a) A due process hearing request for a pupil in a State facility shall be made to the Department of Education according to N.J.A.C. 6:28-2.7. Attempts to resolve conflicts prior to a request for due process are encouraged; however a request for mediation is not a prerequisite to a hearing.

(b) A request for mediation may be made directly to the Department of Corrections or the Department of Human Services.

1. The Department of Corrections and the Department of Human Services shall adhere to written mediation procedures approved by the Department of Education.

(c) Mediation efforts by the Department of Education as described in N.J.A.C. 6:28-2.6 may be requested for educationally disabled pupils.

(d) Discipline of educationally disabled pupils shall be according to N.J.A.C. 6:28-2.8.

(e) Surrogate parents shall be appointed according to N.J.A.C. 6:28-2.2.

Amended by R.1985 d.209, effective May 6, 1985.
See: 17 N.J.R. 345(a), 17 N.J.R. 1077(a).

(a) added text: "or an educational".
Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

(a) and (b) replaced with language referencing N.J.A.C. 6:28-2.7 and mediation procedures; discipline referenced to N.J.A.C. 6:28-2.8.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Recodified from N.J.A.C. 6:28-8.3 and amended by R.1993 d.194, effective May 3, 1993.

See: 25 N.J.R. 400(a), 25 N.J.R. 1889(b).

Former N.J.A.C. 6:28-8.2, Pupil records was deleted by this rulemaking and provisions transferred to new chapter N.J.A.C. 6:9; former rulemaking at that cite is as follows:

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Records to be transmitted "prior" to exiting a facility; (c) added.

6:28-8.3 Provision of programs

(a) A residential State Facility may recommend placement of a pupil with an educational disability in a local school district. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.

(b) All personnel providing special education programs according to N.J.A.C. 6:28-4.3 or 4.1, related services according to N.J.A.C. 6:28-3.8 or child study team services according to N.J.A.C. 6:28-3.1(a) shall hold the appropriate educational certificate for the position in which they function.

(c) Day training programs operated by the Department of Human Services shall be provided in the following manner:

1. The Department of Human Services shall provide educational programs and related services for pupils classified as eligible for day training in State-operated or contracted facilities;

2. A day training program is responsible for implementing the individualized education program which shall be developed by the district board of education;

3. An educational program for pupils classified as eligible for day training in a State residential facility shall be commensurate with those in a day training center;

4. For pupils placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

(d) When a pupil in a residential State facility or day training center is in need of home instruction according to N.J.A.C. 6:28-4.5, the State facility or day training center shall implement the program.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Detailed and specific requirements added regarding documentation, placement, teacher certifications, IEPs, home instruction, annual reviews and reevaluations.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

At (c)3, deleted requirement for a certified teacher of the handicapped in classes in State facilities in which both educationally and noneducationally handicapped pupils are assigned and clarification of teacher responsibility in the development of IEPs in day training centers.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Recodified from N.J.A.C. 6:28-8.4 and amended by R.1993 d.194, effective May 3, 1993.

See: 25 N.J.R. 400(a), 25 N.J.R. 1889(b).

References to pupils in State operated facilities deleted; provisions transferred to new rules at N.J.A.C. 6:9.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Case Notes

N.J.A.C. 6:28-8.3(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

6:28-8.4 (Reserved)

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

(c) and (d) deleted, (e) recodified to (c) and cite to N.J.S.A. 18A:7B-12 added.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

(c) deleted and replaced.

Repealed and recodified by R.1993 d.194, effective May 3, 1993.

See: 25 N.J.R. 400(a), 25 N.J.R. 1889(b).

Formerly "Eligibility to receive State funds"; provisions now found in N.J.A.C. 6:9.

6:28-8.5 (Reserved)

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

"Educationally" added to modify "handicapped".

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

New (a) added; (a)-(b) recodified as (b)-(c).

Repealed and recodified by R.1993 d.194, effective May 3, 1993.

See: 25 N.J.R. 400(a), 25 N.J.R. 1889(b).

Formerly "Program review and approval"; provisions now found in N.J.A.C. 6:9.

Case Notes

Funding of educational services under former N.J.A.C. 6:28-10.5. *Levine v. State Dept. of Institution and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

6:28-9.1 Monitoring and corrective action

(a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code and the approved special education plan.

(b) The monitoring process may include, but is not limited to:

1. Review of data and reports;
2. On-site visits;
3. Comparison of a sample of individualized education programs with the programs and services offered; and
4. Audit of Federal and State funds.

(c) After the monitoring process is completed, a report shall be written and sent to the public or private agency.

(d) If the public or private agency receives a review report that indicates noncompliance, a corrective action plan shall be developed by the agency and submitted to the Department of Education for approval.

(e) The corrective action plan shall be submitted according to a format provided by the Department of Education and shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed; and
2. Dates by which noncompliance will be corrected.

(f) The Department of Education shall review the corrective action plan and notify the agency if it is acceptable.

(g) When a corrective action plan is not submitted, found unacceptable or not implemented, the Department of Education shall notify the agency of the actions that it intends to take.

(h) An appeal of the denial of approval of a corrective action plan, imposition of sanctions or determination of noncompliance may be made to the Commissioner of Education according to N.J.A.C. 6:24.

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

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Words "corrective action" substituted for "improvement"; (i) added requiring the Department to maintain monitoring records for five years.

6:28-9.2 Complaint investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint of substance regarding the provision of special education and/or related services covered under this chapter.

1. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received for pupils age three and above.

(b) The investigation may include, but not be limited to:

1. Review of policies and procedures;
2. Review of pupil record(s);
3. Observation of special class programs; and
4. Interview(s) of complainants, staff and parents.

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

(d) Upon receipt of the complaint investigation report, either party may appeal the findings and/or recommendations by filing a petition with The United States Secretary of Education in accordance with 34 C.F.R. 76.781.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Formerly "complaint procedures"; specifics of investigation content and steps to be taken added at new (b), (c) and (d).

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Specified complaint must be a signed complaint.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Changed to clarify that county offices of education are not involved in complaint investigation procedures for early intervention programs because county offices of education do not oversee or supervise those programs.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS

6:28-10.1 Early intervention programs serving children between birth and age three

Early intervention programs shall be administered by the Department of Health as the lead agency in conjunction with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

(e)-(k) added requirements regarding funding, personnel and facilities.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Added new (l) regarding due process.

Amended by R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Editorial change only.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

(m) has been amended to comply with 34 CFR 303.420 which allows the Department to adopt the same mediation procedures for early intervention programs as for school age children.

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

6:28-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health for pupils age three

(a) When an individualized education program is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that pupil by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6:28-1.1(e) shall be met;
2. A contractual agreement shall be provided between the district board of education and the early intervention program;
3. Personnel shall be appropriately certified; and
4. Applications for exceptions according to N.J.A.C. 6:28-4.6 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

Repealed by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Formerly "District board of education responsibilities".

New Rule, R.1991 d.337, effective July 1, 1991.

See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

6:28-10.3 (Reserved)

Repealed by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Formerly "Approval process".

SUBCHAPTER 11. SPECIAL EDUCATION PILOT PROJECT

6:28-11.1 General provisions

(a) The New Jersey Department of Education has developed the Plan to Revise Special Education in New Jersey (Plan). The Plan is a major initiative of the Department and includes a set of recommendations designed to improve the organization and delivery of special education programs and services to educationally disabled pupils. The Plan is also designed to build the capacity in regular education to serve nondisabled pupils with mild learning problems in regular education.

(b) The Plan to Revise Special Education in New Jersey is being implemented as a pilot project operated by the Department of Education in selected local districts under the authority of N.J.S.A. 18A:7A(5)i.

(c) This subchapter shall replace N.J.A.C. 6:28-3.1, 3.2, 3.4 and 3.5 and N.J.A.C. 6:28-4.1(a) through (d) and 4.3 through 4.6 and shall apply only to those districts selected by the Department of Education to pilot the Plan. All other provisions of N.J.A.C. 6:28 shall apply to such districts except as specifically noted in this subchapter.

(d) Prior to September 1, 1988, the child study teams of pilot districts shall determine an appropriate eligibility status for all pupils classified according to N.J.A.C. 6:28-3.5(d).

1. The pupil's instructional needs shall be used to determine eligibility for special education and/or related services according to N.J.A.C. 6:28-11.7(d).

2. Parents shall be notified of the eligibility status in (d) above at a conference attended by the pupil's case manager and classroom teacher.

(e) If any provision of this subchapter or the application of such a provision to any person is found invalid, such invalidity shall not affect other provisions or applications of this subchapter which can be given effect. To this end, the provisions of this subchapter are declared to be severable.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Corrected N.J.A.C. cites.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Internal cites corrected.

6:28-11.2 Pupil assistance committees

All pilot district boards of education shall establish pupil assistance committees in accordance with N.J.A.C. 6:26 by July 1993.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Clarified eight "calendar" weeks.

Repeal and New Rule, R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Section was "School resource committee".

6:28-11.3 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who shall:

1. Evaluate pupil instructional needs after parental consent has been received and participate in the determination of eligibility for special education and/or related services for pupils identified as potentially educationally disabled;

2. Coordinate the development, monitor and evaluate the effectiveness of the individualized education programs for pupils determined eligible for special education and/or related services;

3. Deliver appropriate related services to educationally disabled pupils;

4. Provide preventive and support services to nondisabled pupils; and

5. Provide services to the regular education staff which include:

i. In-service training, demonstration teaching, curriculum development;

- ii. Provision of techniques, materials and programs for pupils experiencing difficulties in learning;
- iii. Consultation with school staff and parents;
- iv. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties; and
- v. Core membership on the school resource committees.

(b) A child study team shall consist of a learning disabilities teacher-consultant, a school psychologist, and a school social worker. A speech correctionist or speech-language specialist shall be a child study team member for pupils in preschool through grade three. All members of the child study team shall be employees of the pilot district board of education, have an identifiable apportioned time commitment to the local school district and be available during the hours when pupils are in attendance.

(c) The child study team shall consult with a school nurse when considering medical diagnostic services.

(d) At least one member of the child study team shall be knowledgeable about placement options for pupils with educational disabilities according to N.J.A.C. 6:28-4.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

At (a) added requirements that parental consent must be received; added (d) requiring at least one team member to be knowledgeable regarding placement options.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

The requirement for the participation of the speech correctionist or speech-language specialist as a child study team member changed from all grades to preschool through grade three in the pilot districts.
Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.4 Identification

(a) Each pilot district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district, may be educationally disabled and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Health according to P.L. 1992, c.155.

1. The identification procedures shall include criteria to identify pupils who may be experiencing physical, sensory, social/emotional, learning, communication or cognitive difficulties.

2. The identification procedures shall provide for participation of the school resource committee, instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.

(b) When a pupil with an educational disability transfers into a pilot district, placement shall be according to N.J.A.C. 6:28-4.1(h).

(c) For a child who is identified to the district board of education at least 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if the pupil is determined to be eligible, develop and make available an individualized education program. This shall be completed not later than the date on which the child attains age three.

(d) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

(e) Each pilot district shall follow identification requirements according to N.J.A.C. 6:28-3.2.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Clarified ages three "through" 21; added (c) regarding child enrolled in early intervention program.

Amended by R.1991 d.337, effective July 1, 1991.
See: 23 N.J.R. 1053(b), 23 N.J.R. 2032(b).

Changed "age three" definition and added (d) concerning identification and provision of IEP for child.

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.
See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.5 (Reserved)

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

At (g) established minimum screening to be at least observation and screening must be completed within 30 calendar days of parental request; (h) deleted (i), (j) recodified.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Cross reference corrected at (c) and reference to "initial evaluation" added at (d).

Administrative Correction to (g): Added "age" to text.
See: 23 N.J.R. 59(c).

Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Deleted all provisions replaced with cross reference to N.J.A.C. 6:28-3.3.

Repealed by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

Section was "Referral".

6:28-11.6 Comprehensive evaluation

(a) Prior to conducting an initial evaluation, the child study team shall request and obtain consent to evaluate. The purpose of the evaluation shall be to:

1. Determine eligibility for special education and/or related services; and
2. Determine an appropriate educational program and placement for the pupil.

(b) The evaluation plan shall include:

1. The specific information to be obtained to assess in all areas of suspected disability;

2. The child study team members who will participate in the evaluation.

- i. The child study team shall gather appropriate data about the referred pupil and determine what additional diagnostic information must be gathered in order to assist in determining eligibility for special education and/or related services and in determining the instructional needs of the pupil.

- ii. The child study team shall develop a description of the available data about the pupil and that data which must still be gathered in order to address the concerns expressed in the child study team referral. The child study team shall prepare a statement which supports the basis upon which testing is decided.

- iii. Eligibility criteria as listed in N.J.A.C. 6:28-11.8 shall be considered.

- iv. Data collection shall include, but not be limited to, an interview with the referring teacher and parent, if direct referral is made by the parent(s);

3. The evaluation procedures necessary to obtain this information;

4. The language(s) or method of communication to be used in the evaluation process; and

5. The designation of a child study team member as case manager.

(c) The parent(s) shall be provided a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.

(d) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay, in accordance with N.J.A.C. 6:28-2.1.

(e) Changes in the evaluation plan shall be reported to the parent prior to implementation.

(f) All evaluations specified in this chapter shall:

1. Be conducted on an individual basis;
2. Use information from group tests only to supplement individual evaluations;
3. Be conducted in the dominant language or method of communication determined in the evaluation plan;

4. Consider the pupil's socio-cultural background and adaptive behavior in home, school and community; and

5. Result in a written report which shall be dated and signed by the individual who originated the data.

(g) A comprehensive evaluation shall consist of the following:

1. A minimum of two child study team members shall evaluate a pupil to determine eligibility for special education and/or related services and the program needs of the pupil. Evaluator selection shall be based upon the nature of the educational problem, available pupil records, eligibility criteria and program planning. A parent shall have the right to receive a third child study team member assessment of their child upon request.

- i. The child study team shall determine the need for specialized educational evaluations which are necessary for educational planning. The child study team in consultation with the school nurse and/or school physician shall determine the need for comprehensive, as well as specialized, medical evaluations.

- ii. All preschool pupils identified to the child study team shall undergo a comprehensive medical evaluation.

- iii. The case manager shall coordinate the evaluation efforts of the team in order to maintain timelines and appropriate parent involvement.

2. Assessment by a child study team member must include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the discipline reporting. The initial assessment must comply with the eligibility criteria of N.J.A.C. 6:28-11.8, address those areas included in the evaluation plan based upon the presenting problem of the identified pupil, and result in a written report.

(h) Each evaluation must:

1. Consider the requirements for eligibility for special education and/or related services;

2. Be used to determine instructional needs of the pupil; and

3. Consider any relevant medical condition in evaluating the pupil's instructional needs.

(i) Eligibility assessment for speech-language services shall be conducted by the speech correctionist or speech-language specialist and others as appropriate and include a written report from the pupil's teacher.

(j) Examination results and findings of other specialists shall be included in the comprehensive evaluation where appropriate.

(k) When reports and/or evaluations of other New Jersey public school district child study team members, a Department of Education approved clinic or agency, child study team members of State-operated programs or facilities or a professional in private practice are accepted by members of the child study team, acceptance shall be noted in writing and become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

(l) A reevaluation, and individualized education program if appropriate, shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted more often if conditions warrant or if the pupil's parent(s) or teacher requests the reevaluation.

1. The full child study team shall develop an evaluation plan which shall include a determination of needed evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program.

2. The full child study team shall design an evaluation plan, as described in this section. The parent(s) shall be provided with a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.

3. Whenever a change in eligibility status is being considered, written documentation supporting that decision shall be developed by the full child study team and be based upon a reevaluation of the pupil.

(m) By June 30 of a pupil's last year in a program for the preschool handicapped, the child study team shall review available assessment information and obtain additional evaluations, as necessary, to determine eligibility according to N.J.A.C. 6:28-11.7.

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Specified an evaluation shall be sent to parents, must result in a written report and an IEP or reevaluation must take place within three years of the date of previous classification.

Amended by R.1990 d.450, effective September 4, 1990.
See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Amended to ensure consistency with N.J.A.C. 6:28-3.4(a).
Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.7 Determination of eligibility

(a) When an evaluation is completed, members of the child study team who participated in the assessment and parent(s) shall meet with the school principal and staff member(s), identifying the potentially educationally disabled pupil, if they choose to participate, in order to:

1. Summarize the pupil's current educational status;
2. Determine whether the pupil is eligible for special education and/or related services;

i. If a pupil is determined to be eligible for special education and/or related services, the current educational status statement shall become part of the pupil's individualized education program.

ii. Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the staff member identifying the potentially educationally disabled pupil shall be given a written summary of all decisions and any recommended course(s) of action, signed by the participating child study team members.

3. Determine eligibility for special education and/or related services according to N.J.A.C. 6:28-11.8; and

4. Complete the individualized education program in accordance with N.J.A.C. 6:28-3.6 and 11.9.

(b) When a pupil with an educational disability transfers into a pilot school district, review of the pupil's classification and appropriateness of the eligibility status and individualized education program shall be conducted within 30 calendar days.

(c) Pupils determined by the school physician to have temporary health problems which prohibit regular attendance in school need not be classified as educationally disabled but shall be entitled to receive at least five hours per week of individual instruction at home for a period of time determined by the school physician. After 60 days, the pupil shall be identified to the child study team to determine if the pupil is eligible for special education and/or related services.

(d) Pupils determined eligible for special education or related services shall be classified according to the following definitions:

1. Eligible for related services: The pupil shall have met the criteria for one or more domains listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that a related service is necessary.

2. Eligible for part-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil can participate in regular education with the use of resource center programming.

3. Eligible for full-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil requires special education in a full-time special class.

(e) Pupils enrolled in shared-time special needs vocational programs who are in their home district for one half of the school day may be served in either full-time or part-time programs.

(f) Pupils shall not be eligible for special education solely for cultural or linguistic factors, poor attendance, substance abuse, poor school performance or disciplinary reasons.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.8 Eligibility criteria

(a) In order to be eligible for special education and/or related services, a comprehensive evaluation of the pupil shall be made to determine if the pupil meets the criteria in a domain in which a handicapping condition may manifest itself and an area of educational impact described in (e) below.

(b) The pupil must meet both standard and functional criteria in order to satisfy a domain or an impact area.

1. Most standard criteria are met through the use of standardized tests.

2. Whenever a standardized test is used, it shall:

i. Be individually administered;

ii. Have established reliability and validity;

iii. Be normed on a representative or the same population; and

iv. Express data as either standard scores with standard deviation used for comparison or norm referenced with cutoff score.

3. Functional assessment shall include:

i. A minimum of one structured observation of not less than 20 minute duration by each of two child study team members as required for each domain or area listed in this section;

ii. An interview by an appropriate child study team member with the pupil's parent in order to provide information to be considered as part of the evaluation by the child study team;

iii. One or more informal measure(s) which may include:

(1) Check lists;

(2) Analysis of work samples;

(3) Trial teaching;

(4) Self report;

(5) Sentence completion;

(6) Criterion referenced tests;

(7) Curriculum based assessment; or

(8) Informal rating scales;

iv. Review of pupil development/educational history including records and interviews; and

v. A review of interventions documented by the classroom teacher(s) and/or the school resource committee.

(c) The following special considerations shall apply to eligibility criteria for preschool pupils:

1. Preschool evaluations need not use the school setting as the reference for meeting the functional criteria. In such cases the home, institution or community setting shall be substituted;

2. The learning domain in (d)2 below shall not be required;

3. The child study team must determine that the pupil requires a full-time special education program; and

4. The criteria for educational impact need not be demonstrated.

(d) The following criteria are established for each domain:

1. Cognitive criteria are as follows:

i. Standard criteria: The pupil's general level of cognitive functioning on a standardized intelligence test administered by a school psychologist shall be at least two standard deviations below the norm;

ii. Functional criteria: The pupil's general level of cognitive functioning within the school setting shall be significantly discrepant from the typical pupil and/or appropriate norms. This cognitive deficit shall include an inability to demonstrate personal independence and social responsibility according to age and sociocultural group expectations and any of the following: an inability to generalize/transfer information skills and concepts; an inability to appropriately solve problems; or an inability to formulate appropriate judgments and inferences;

iii. Assessment areas for the cognitive domain shall include:

(1) The pupil's general level of cognitive functioning;

iv. Assessment shall be by at least:

(1) A school psychologist; and

(2) One other child study team member;

2. Learning criteria are as follows:

i. Standard criteria: The pupil demonstrates a significant discrepancy in one or more academic area(s) between current achievement and expected achievement based upon level of intellectual functioning.

ii. Functional criteria: The pupil demonstrates a significant discrepancy in one or more academic area(s) between current achievement and expected achievement which manifests itself within the school setting.

iii. Assessment areas for the learning domain shall include:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Mathematic computation;
- (4) Mathematic reasoning; and
- (5) Written expression.

iv. Assessment shall be by at least:

- (1) The school psychologist; and
- (2) The learning disabilities teacher-consultant;

3. Social/emotional criteria are as follows:

i. Standard criteria: The pupil demonstrates a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with one or other pupil's social/emotional growth within the school setting;

ii. Functional criteria: The pupil shall demonstrate a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with the pupil's own or with others' social/emotional growth within the school setting. The behavior is significantly discrepant from the typical pupil and/or age appropriate norms;

iii. Assessment areas for the social/emotional domain shall include:

- (1) Pupil's perception of self and world;
- (2) Relationships with peers and adults;
- (3) Affective behavior; and
- (4) Atypical behavior; and

iv. Assessment shall be by at least:

- (1) A school psychologist; and
- (2) A school social worker;

4. Physical criteria are as follows:

i. Standard criteria: The pupil has received a diagnosis describing a physical condition which interferes with the pupil's ability to function independently in a school setting;

ii. Functional criteria: The pupil's physical condition requires strategies, materials and/or equipment in order to compensate for the physical condition and to be able to function in the school environment;

iii. Assessment areas for the physical domain shall include:

(1) Standard assessment areas, as follows:

- (A) Health; and
- (B) Physical stamina.

(2) Functional assessment areas, as follows:

- (A) Physical stamina;
- (B) Physical performance in communication;
- (C) Manipulation of materials;
- (D) Mobility; and
- (E) Safety.

iv. Assessment shall be by at least:

- (1) A licensed physician; and
- (2) Two child study team members.

5. Sensory-hearing criteria are as follows:

i. Standard criteria: The pupil's performance on an audiological examination shall indicate a loss in the speech range of 30 decibels or greater in the better ear when aided;

ii. Functional criteria: The pupil's auditory functioning requires special strategies, materials and/or equipment in order to compensate for the auditory deficit and to be able to function in the school environment;

iii. Assessment areas for the sensory-hearing domain shall include:

(1) Standard assessment areas, as follows:

- (A) Pure tone including air and bone conduction with masking when appropriate;
- (B) Speech reception and detection;
- (C) Speech discrimination;
- (D) Tolerance levels; and
- (E) Use of hearing aids.

(2) Functional assessment areas, as follows:

- (A) Auditory performance in communication including speech and language; and
- (B) Safety.

iv. Assessment shall be by at least:

- (1) An otolaryngologist or licensed audiologist; and
- (2) Two child study team members.

6. Sensory-vision criteria are as follows:

i. Standard criteria: The pupil's visual acuity is 20/70 or less in the better eye after correction or demonstrates a severe restriction of the field of vision which interferes with learning.

ii. Functional criteria: The pupil's visual functioning requires special strategies, materials and/or equipment in order to function safely and effectively in the school setting.

iii. Assessment areas for the sensory-vision domain shall include:

(1) Standard assessment areas, as follows:

(A) Visual acuity;

(B) Field of vision.

(2) Functional assessment areas, as follows:

(A) Sensory performance (i.e., print requirements, eye fatigue, distance) in reading and other activities;

(B) Safety; and

(C) Mobility.

iv. Assessment shall be by at least:

(1) A licensed optometrist or ophthalmologist; and

(2) Two child study team members.

7. Communication criteria are as follows:

i. Standard criteria for the communication domain shall include:

(1) Articulation—Pupil's performance on a standardized articulation test falls at least 1.5 standard deviations below the mean or the pupil exhibits one or more errors of sound production beyond the age at which 90 percent of the population has achieved mastery according to developmental norms;

(2) Language—Pupil's performance falls at least 1.5 standard deviations below the mean or below the 10th percentile in at least two standardized language tests;

(3) Voice—The pupil's performance on a formal rating scale is below the normed level for voice quality, pitch, resonance, loudness or duration; or

(4) Fluency—The pupil demonstrates at least a mild rating or its equivalent on a formal fluency rating scale or the pupil exhibits moments of stuttering on five percent or more of the words spoken.

ii. Functional criteria: The pupil's communication within the school setting is significantly discrepant from the typical pupil and/or age appropriate norms in one or more of the following:

(1) Pervasive and chronic inability to use language, including semantic, morphological and phonological aspects of language;

(2) Articulation disorder;

(3) Fluency; and

(4) Voice disorders including volume, pitch, resonance and/or quality that interfere with the listener's ability to comprehend.

iii. Assessment areas for the communication domain shall include:

(1) Language;

(2) Articulation;

(3) Fluency; and

(4) Voice.

iv. Assessment shall be by at least:

(1) A speech correctionist or speech-language specialist; and

(2) One other child study team member.

v. Pupils identified solely for speech-language services shall require at least the evaluation and observation of the speech correctionist or speech-language specialist and information from the pupil's teacher.

(e) The following criteria are established for each educational impact area:

1. Achievement criteria are as follows:

i. Standard criteria: The pupil's performance in one or more area(s) on a standardized achievement test individually administered by a learning disabilities teacher-consultant is below the State minimum level of proficiency in grades 3-12 or is below the district norm for grades K-2 as described in N.J.A.C. 6:8-3.4.

ii. Functional criteria: The pupil's academic performance in the school setting is significantly discrepant from grade appropriate norms.

iii. Assessment areas for achievement are:

(1) Basic reading skills;

(2) Reading comprehension;

(3) Math computation;

(4) Math reasoning; and

(5) Written expression.

iv. Assessment shall be by at least:

(1) A learning disabilities teacher-consultant; and

(2) One other child study team member.

2. Behavior criteria are as follows:

i. Standard criteria: The pupil demonstrates behaviors which interfere with the pupil's ability to function in the school setting and is either a danger to self or others and has a chronic or pervasive interference with own or others' academic growth.

ii. Functional criteria: The pupil's behavior in the school is significantly discrepant from the typical pupil or age appropriate norms as to be either a danger to self or others or has a chronic or pervasive interference with own or others' academic growth.

iii. Assessment areas for behavior are:

- (1) Relationships with children and adults;
- (2) Affective behavior; and
- (3) Atypical behavior.

iv. Assessment shall be by at least:

- (1) A school psychologist; and
- (2) A school social worker.

(f) Pupils who do not meet the standard eligibility criteria but do meet functional criteria may be considered as eligible for special education if the child study team determines that the pupil is educationally disabled and requires special education and/or related services. The child study team must show evidence why the standard criteria are inappropriate for the pupil and how the other evaluation data support a decision to classify the pupil.

(g) When the parent of a pupil eligible for special education and/or related services requests a classification designation as stated in N.J.A.C. 6:28-3.5(d), the child study team shall select an appropriate classification type based upon the evaluation completed according to N.J.A.C. 6:28-11.6 and 11.7 and any specialist required by N.J.A.C. 6:28-3.5(d).

Amended by R.1989 d.239, effective May 15, 1989.
See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Internal cites and punctuation corrected.
Amended by R.1992 d.280, effective July 6, 1992.
See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "handicapped" replaced by "disabled"; internal cites corrected.

Amended by R.1994 d.127, effective April 4, 1994.
See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.9 Individualized education program

(a) The individualized education program for each pupil with an educational disability shall be developed according to N.J.A.C. 6:28-3.6 and this subsection.

1. The individualized education program shall be developed at a meeting attended by the child study team members who evaluated the pupil, the pupil's parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, if appropriate. The certified school personnel identifying the pupil, the school principal or designee and other appropriate individuals may participate in the meeting.

2. The individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), (d), (e) and (f) shall also include the following:

i. A statement of the pupil's eligibility for special education and/or related services based upon the eligibility criteria.

ii. A statement of current educational status which describes the pupil's present levels of educational performance in terms of instructional needs related to curriculum areas.

iii. A statement of annual pupil goals and short term objectives which describe the instructional entry level and anticipated outcome at the end of one year. Annual goals shall be related to each curriculum area and be derived from the pupil's current educational status statement. Short term objectives shall be measurable intermediate steps between the pupil's current level of educational performance and the annual goal.

(b) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parents, shall meet to review and revise the individualized education program as specified in this subchapter.

1. Reevaluation of pupils already classified according to N.J.A.C. 6:28-3.5 shall be undertaken within three years of the date of the pupil's last classification and be completed according to N.J.A.C. 6:28-11.6 and 11.7.

2. Termination of a pupil's eligibility for special education and/or related services shall be made only after a reevaluation of the pupil by the child study team as required by N.J.A.C. 6:28-11.6 and 11.7.

3. Eligibility criteria described in N.J.A.C. 6:28-11.8 shall apply only to pupils being identified to special education for the first time. The child study team shall document the reason(s) for continuing a pupil in special education and/or related services when the pupil no longer meets the eligibility criteria.

(c) Documentation of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

(d) When the parent(s) declines participation in an individualized education program meeting or is in disagreement with the recommendations, the remaining participants shall develop a written individualized education program in accordance with this section. Initial implementation of special education cannot occur until consent is obtained or a hearing decision is issued. For other than initial implementation of special education, the parent(s) shall be provided written notice according to N.J.A.C. 6:28-2.3.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Language added at (d) regarding documentation of participation; (e) added regarding policy when parent declines participation in planning process.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

Amended by R.1993 d.393, effective August 2, 1993.

See: 25 N.J.R. 1318(a), 25 N.J.R. 3515(a).

Amended by R.1994 d.127, effective April 4, 1994.

See: 25 N.J.R. 5734(a), 26 N.J.R. 1495(b).

6:28-11.10 Provision of programs

(a) Each pilot district board of education shall provide educational programs and related services for educationally disabled pupils in accordance with their individualized education programs.

(b) Special education programs shall be consistent with the special education plan submitted by the district board of education and approved by the Department of Education.

(c) A pilot district board of education's proposal to establish, change or eliminate special education programs or services shall be approved by the Department of Education prior to any such action.

(d) Appropriate facilities shall be provided for pupils with educational disabilities according to N.J.A.C. 6:22.

(e) Each full-time class type shall be described in individual class profiles that are reviewed and approved by the county office and the Division of Special Education acting jointly. Appropriate written curricula shall be developed and appropriate materials shall be provided for pupils with educational disabilities served in full-time class types.

(f) Each pilot district board of education, through appropriate personnel, shall participate in the process to evaluate its special education programs and services according to N.J.S.A. 18A:7A-4 through 16.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Corrected citation style.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

6:28-11.11 Program options

(a) Educational program options shall include those listed in N.J.A.C. 6:28-4.2(a).

(b) Program criteria shall be met in accordance with N.J.A.C. 6:28-4.3.

1. In addition, the group size in out-of-class replacement resource center instruction may be increased by one-third with the addition of a classroom aide by obtaining the written approval of the Department of Education through its county office.

(c) Full-time special class programs shall meet the following criteria:

1. Full-time class types shall provide a specific focus in terms of instruction and curriculum. This focus shall include specific:

- (1) Emphasis in instruction;
- (2) Adaptation to the environment of the class;
- (3) Instructional delivery;
- (4) Specialized services;
- (5) Related services; and
- (6) Curriculum.

2. An educationally disabled pupil eligible for full-time special education shall be enrolled on a special class register.

3. Pupils eligible for full-time special education programs shall be the primary instructional responsibility of the special education teacher of the class type designated for the pupil.

4. Pupils must spend the majority of their instructional day in the full-time class type.

5. Teachers in full-time class types shall work cooperatively with other teachers to whom the pupil with an educational disability may be assigned for portions of his or her educational program.

6. Depending on the class type designation of the full-time special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted or teacher of deaf or hard of hearing.

7. Class types providing services to preschool pupils must meet the requirements of the preschool handicap class type as well as the specialized class type.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

Hyphenated "speech-language"; restrict age span to four years.

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Cross reference added at (a)9 concerning number of hours of instruction provided.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Amended to allow the *Plan to Revise* pilot districts to operate their resource centers in the same manner as other districts will in accordance with N.J.A.C. 6:28-4.2(a) and 4.3(b).

6:28-11.12 Full-time class types

(a) Preschool handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the preschool pupil's school readiness needs are the primary focus.

2. The program shall emphasize:

- i. Developing/improving gross and fine motor readiness skills, such as hopping, cutting and coloring;
- ii. Developing/improving communication skills, such as articulation, receptive and expressive language;
- iii. Developing/improving school appropriate behaviors, such as attending and following directions;
- iv. Developing/improving self-help skills, such as dressing skills, feeding skills and toileting skills;
- v. Developing/improving social skills, such as interaction with peers in appropriate play behavior; and
- vi. Developing academic readiness skills, such as color recognition and letter recognition.

3. Instruction shall be provided by a certified teacher of the handicapped and nursery school.

4. Age span shall be three years.

5. Maximum class size shall be eight.

6. Staff/pupil ratio shall be 1:4.

7. Required related services shall include counseling and/or training services for parents.

(b) Learning disabilities class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified academic needs are the primary focus.

2. The program shall emphasize:

- i. Improving reading skills;
- ii. Improving language arts skills;
- iii. Improving mathematics skills;
- iv. Improving general organizational skills, study skills and strategies;
- v. Decreasing distractibility and activity level;
- vi. Improving social skills; and
- vii. Assisting pupils in coping with academic difficulties and failure.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be four years for both elementary and secondary.

5. Maximum class size shall be 10 for both elementary and secondary.

6. Staff/pupil ratio shall be 1:10 for both elementary and secondary.

7. No required related services are required for this class type.

(c) Communication handicap class types shall meet the following requirements:

1. This class type serves pupils free of significant hearing and acuity problems and shall provide an environment in which the pupil's identified communication needs are the primary focus.

2. The program shall emphasize:

i. Improving the processing of receptive language, such as, following oral directions, responding appropriately to questions;

ii. Improving the organization and production of expressive language;

iii. Acquiring a vocabulary and linking words together appropriately; and

iv. Improving voice, fluency and/or articulation.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be four years for both elementary and secondary.

5. Maximum class size shall be eight for elementary and 10 for secondary.

6. Staff/pupil ratio shall be 1:8 for elementary and 1:10 for secondary.

7. Required related services shall include speech/language therapy.

(d) Moderate cognitive handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified cognitive needs are the primary focus.

2. The program shall emphasize:

i. Improving functional academic skills;

ii. Improving functional life skills;

iii. Improving functional vocational skills; and

iv. Improving social skills.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be four years for both elementary and secondary.

5. Maximum class size shall be 10 for both elementary and secondary.

6. Staff/pupil ratio shall be 1:10 for both elementary and secondary.

7. No required related services are required for this class type.

(e) Moderate behavior handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified behavioral needs are the primary focus.
2. The program shall emphasize:
 - i. Improving ability to build or maintain satisfactory relationships with others;
 - ii. Decreasing behaviors which interfere with other pupils' social/emotional or academic growth;
 - iii. Decreasing behaviors which present a danger to the pupil or others;
 - iv. Increasing self-control;
 - v. Increasing social skills for successful group participation; and
 - vi. Improving pupils' sense of personal adequacy and independence.
3. Instruction shall be provided by a certified teacher of the handicapped.
4. Age span shall be four years for both elementary and secondary.
5. Maximum class size shall be eight for both elementary and secondary.
6. Staff/pupil ratio shall be 1:8 for both elementary and secondary.
7. Required related services shall include:
 - i. Counseling; and
 - ii. Counseling and/or training services for parents.

(f) Severe behavior handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified behavioral needs are the primary focus.
2. The program shall emphasize:
 - i. Reducing atypical behavior patterns, such as hand flapping, twirling, ritualistic movements;
 - ii. Increasing responsiveness to people, such as eye contact, smiling, touching;
 - iii. Improving communication skills, such as reducing inappropriate noises, laughter;
 - iv. Decreasing bizarre responses to aspects of the environment, such as inappropriate use of objects, object fixation, need for sameness; and
 - v. Reducing severe acting out behavior which results in a danger to self or others, such as head banging, biting, scratching.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be two years for preschool and four years for elementary and secondary.

5. Maximum class size shall be six for preschool, eight for elementary and 12 for secondary.

6. Staff/pupil ratio shall be 1:2 for preschool, 1:4 for elementary and 1:6 for secondary.

7. Required related services shall include:

- i. Counseling and/or training services for parents; and
- ii. Speech-language services.

(g) Severe physical handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified physical needs are the primary focus.

2. The program shall emphasize:

- i. Increasing functional/independent living skills, such as dressing, cooking;
- ii. Increasing functional/independent ambulation, and using adaptive equipment and prosthetic devices where needed.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be two years for preschool and four years for elementary and secondary.

5. Maximum class size shall be six for preschool, eight for elementary and 10 for secondary.

6. Staff/pupil ratio shall be 1:3 for preschool, 1:4 for elementary and 1:5 for secondary.

7. Required related services shall include:

- i. Physical therapy; and
- ii. Occupational therapy.

(h) Severe cognitive handicap type classes shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified cognitive needs are the primary focus.

2. The program shall emphasize:

- i. Improving motor skills, such as positioning, grasping, balance, rolling;
- ii. Improving ability to attend, such as eye contact;
- iii. Improving ability to imitate verbally and non-verbally;

iv. Improving ability to respond verbally and non-verbally, such as smiling or vocalizing on request;

v. Improving ability to recognize, such as smiling at a familiar person; and

vi. Improving feeding skills.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be six years for all levels.

5. Maximum class size shall be nine for all levels.

6. Staff/pupil ratio shall be 1:3 for all levels.

7. Required related services shall include:

i. Speech-language services;

ii. Occupational therapy;

iii. Physical therapy;

iv. School nurse services; and

v. Counseling and/or training services for parents.

(i) Auditory handicap type classes shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified auditory needs are the primary focus.

2. The program shall emphasize:

i. Utilizing the visual modality as the primary channel for instruction;

ii. Assisting in auditory habilitation;

iii. Improving language skills;

iv. Improving social skills to facilitate pupils' integration into the environment; and

v. Insuring/facilitating participation of pupils in school-wide activities.

3. Instruction shall be provided by a certified teacher of the deaf/hard of hearing.

4. Age span shall be two years for preschool and four years for elementary and secondary.

5. Maximum class size shall be eight for preschool and elementary and 10 for secondary.

6. Staff/pupil ratio shall be 1:4 for preschool, 1:8 for elementary and 1:10 for secondary.

7. Required related services shall include:

i. Auditory training; and

ii. Speech-language services.

(j) Auditory/visual handicap type classes shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's combined auditory and visual needs are the primary focus.

2. The program shall emphasize:

i. Developing optimal use of residual vision and hearing;

ii. Developing effective and efficient communication skills;

iii. Improving mobility and orientation skills;

iv. Increasing skills in activities of daily living with emphasis on the development of optimal independence; and

v. Improving social skills to facilitate integration into the community.

3. Instruction shall be provided by a certified teacher of the handicapped who is certified as one of the following:

i. Teacher of the deaf/hard of hearing; or

ii. Teacher of the blind/visually impaired.

4. Age span shall be two years for preschool and four years for elementary and secondary.

5. Maximum class size shall be six for all levels.

6. Staff/pupil ratio shall be 1:2 for preschool and 1:3 for elementary and secondary.

7. Required related services shall include:

i. Auditory training;

ii. Vision training;

iii. Speech-language services;

iv. Adapted physical education;

v. Mobility and orientation training; and

vi. Parent training.

(k) Class type maximum class size for all types except severe behavior, severe physical and severe cognitive handicap may be increased by no more than one-third with the addition of a classroom aide by obtaining prior approval from the Department of Education through its county office.

(l) Required related services are those which each program must provide for each pupil pursuant to (a) through (j) above. Pupils must also receive any other related service specified in their individualized education program.

(m) Pupils enrolled in full-time class types may be instructed in regular classes in accordance with their individualized education program. The number of pupils with educational disabilities enrolled in a full-time class register who can attend any given instructional period in such classes shall be limited to four if program modification is required.

(n) In secondary full-time class types, enrollment may be increased by one-half the maximum instructional group size allowed for that specific class type as noted in (c) above. For instructional purposes, no group shall contain more than the maximum number for that class type. Pupils may be of only one class type.

(o) County vocational schools and approved local area vocational school districts providing full-time special education programs may operate special needs shop classes which are open to pupils from all full-time class types. Pupils shall be placed in special needs shops based upon vocational needs, skills and assessment. Group size shall not exceed 10 but may be increased to 15 with the addition of a classroom aide and the approval of the Department of Education through its county office. Teachers in these shops shall hold vocational certification.

Amended by R.1988 d.430, effective September 6, 1988.

See: 20 N.J.R. 1141(a), 20 N.J.R. 2275(a).

In (e) maximum class size changed from "10" to "8" and staff/pupil ratio changed from "1:10" to "1:8".

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

"Language services" substituted for "language therapy".

Amended by R.1990 d.450, effective September 4, 1990.

See: 22 N.J.R. 1412(a), 22 N.J.R. 2683(b).

Pre-school handicap class age span increased from 2 to 3 years.

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "educationally handicapped pupil" replaced by "pupil with an educational disability".

6:28-11.13 Program approval

(a) Annually, each pilot district shall apply for approval of its special education program by completing a report which describes:

1. The related services it provides;
2. The part-time programs it offers; and
3. Profiles of each of the full-time classes it operates which include:
 - i. A description of the learning characteristics of the pupils in the class type, including, but not limited to, ability ranges, behavior and levels of cognitive function; and
 - ii. A description of the instructional characteristics of the class type which include, but are not limited to, curriculum, methods and strategies, materials, supplies and equipment and instructional personnel.

(b) Approval shall be requested in accordance with procedures established by the Division of Special Education and the county office.

(c) A pupil classified as educationally disabled by a child study team may have the individualized education program implemented through individual instruction at home when it can be demonstrated that no other program option is appropriate at that time. This provision shall not apply to pupils suffering from temporary medical problems such as, but not limited to, pregnancy or fractures. Pupils suffering temporary medical problems shall be provided instruction individually through regular education and need not be eligible for special education.

1. Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

2. Approval shall be obtained for a maximum of 60 calendar days.

(d) Pupils may be placed in out-of-district facilities upon the recommendation of the child study team, when an appropriate program is not available within the local district.

(e) Any exceptions regarding the requirements of these operational specifications shall be made only with prior written approval of the Department of Education through its county office and the Division of Special Education according to N.J.A.C. 6:28-4.6 and the following:

1. Pupils received by the pilot district or placed in out-of-district facilities such as, but not limited to, other New Jersey public schools, approved private schools for the handicapped within or outside of New Jersey, and State-operated programs shall be granted an exception regarding classification by the Department of Education through its county office.

2. The exception shall establish the pupil's classification as that of the type of class program which is being considered for placement.

Amended by R.1989 d.239, effective May 15, 1989.

See: 21 N.J.R. 239(a), 21 N.J.R. 1385(a).

N.J.A.C. cite added at (e) and "exception" replaced "waiver".

Amended by R.1992 d.280, effective July 6, 1992.

See: 24 N.J.R. 1150(a), 24 N.J.R. 2434(a).

Term "handicapped" replaced by "disabled".

SUBCHAPTER 12. OUTCOMES-BASED INNOVATIVE PROJECT

6:28-12.1 General provisions

(a) For the purpose of establishing innovative outcomes-based special education projects, exceptions to State requirements in this chapter shall be granted to a select number of district boards of education by the Department

of Education in accordance with a Request for Proposal submitted to the Department which shall:

1. Address each of the criteria listed in (c) below;
2. Be submitted to the director of the Office of Special Education on forms prepared by the Department; and
3. Be submitted in a timely manner.

(b) Exceptions to Federal requirements shall not be granted.

(c) District boards of education shall be selected for participation in this project based on a formal written proposal which shall:

1. Demonstrate that the district has a clear commitment to and is taking responsibility for improved pupil outcomes in special education;

2. Describe clearly stated, measurable pupil outcomes;
3. Demonstrate a high probability that the innovative program design will result in achievement of the intended pupil outcomes;
4. Assure full compliance with all federal special education requirements;
5. Demonstrate that the district's educational community, including the local district board of education, parents, administration and staff, have been involved in the development of the proposed innovative program;
6. Demonstrate that the proposal is designed to meet the educational needs of pupils with educational disabilities in the district; and
7. Demonstrate a commitment to full participation in the evaluation of the project by the Department of Education.