

of the parties, enforcement may not be sought with respect to that part of the decision.

(u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. §1415(k)4 as amended and supplemented. (See chapter Appendix A.)

1. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings.

(v) Any party may appeal the decision of an administrative law judge in a due process hearing.

1. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance the final decision. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergency relief or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitations period for filing appeals, and are instead subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.

(w) Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:

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

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

Amended by R.1998 d.527, effective November 2, 1998.  
See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

Rewrote (d)3ii.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a), changed N.J.A.C. reference.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Rewrote the section.

Amended by R.2002 d.79, effective March 18, 2002.  
See: 33 N.J.R. 3715(a), 34 N.J.R. 1265(a).

In (b), inserted "or a" preceding "reevaluation", and deleted "implement an initial IEP" preceding "or to release".

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a), substituted "Appendixes A and D" for "Appendix" in the third sentence, and amended N.J.A.C. reference at the end.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

#### Law Review and Journal Commentaries

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

#### Case Notes

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

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

New Jersey limitations did not bar parents from seeking retroactive reimbursement. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents did not waive right to reimbursement by unilaterally placing student in private school and failing to initiate review proceedings. *Bernardsville Bd. of Educ. v. J.H.*, D.N.J.1993, 817 F.Supp. 14.

Parents exhausted administrative remedies. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Stipulation of settlement reached in suit under IDEA seeking residential placement did not bar action for funding of residential placement and for compensatory education. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Parents of emotionally disturbed student were "prevailing parties" entitled to recover attorney fees; services performed at administrative level. *Field v. Haddonfield Bd. of Educ.*, D.N.J.1991, 769 F.Supp. 1313.

Authorizing the Office of Special Education Programs to issue the final decision in complaint investigations under N.J.A.C. 6A:14-9.2 is consistent with the overall scheme of resolving individual complaints

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

Forty-five day deadline provided in state special education regulations for expedited hearings in disciplinary matters upon the request of a parent was not arbitrary, capricious, or unreasonable, despite fact that deadline for non-expedited hearings was also 45 days; deadline for expedited hearings allowed for no exceptions or extensions, providing for final decision within the accelerated time frame. Baer v. Klagholz, 771 A.2d 603 (2001).

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations requiring parent seeking emergency relief as part of expedited hearing in connection with student disciplinary matter to demonstrate entitlement to emergency relief did not violate provision of the Individuals with Disabilities Education Act (IDEA) requiring state educational agency (SEA) and local educational agency (LEA) to arrange for expedited hearing upon a parent's request, where emergency relief process and expedited hearing process were separate and were not redundant, and where request for emergency relief did not slow expedited hearing process. Baer v. Klagholz, 771 A.2d 603 (2001).

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

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

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

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

Although L. 2007, c. 331 (N.J.S.A. 18A:46-1.1) places the burden of proof and burden of production in a due process hearing on the school district, petitioners requested a due process hearing on September 11, 2007, prior to the January 13, 2008 effective date of the act; thus, petitioners were subject to the default rule of *Schaffer v. Weast*, 546 U.S. 49 (2005), which placed the burden of proof on the party seeking relief. S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ., OAL Dkt. No. EDS 8796-07, 2008 N.J. AGEN LEXIS 991, Final Decision (December 11, 2008).

Program developed by a district for its multiply disabled students at the district's high school would provide an autistic student with a free, appropriate education and the transition from an out-of-district private school that the student had been attending before his parents moved to the district would not have any adverse effects. With the encouragement of his parents, the student would be able to make a successful transition into that program. D.P. ex rel. D.P. v. Central Reg'l Bd. of Educ., OAL Dkt. No. EDS 4543-08, 2008 N.J. AGEN LEXIS 990, Final Decision (December 3, 2008).

School district was ordered to revise IEP for a severely autistic 10-year-old child to incorporate a behavioral intervention plan developed by an out-of-state institute which advocated use of a "harness," to be only used outdoors to prevent the child from running away, and "face screening," which had the effect of sensual deprivation for a short period of time to calm the child down. Parent clearly satisfied requirement that child would suffer irreparable harm if relief was not granted where psychological experts at the institute opined that the child would likely regress if the successful techniques were stopped when he returned to New Jersey. The institute was willing to train the person who would be working with the child at no cost to the district. The district's tort liability concerns were speculative for the techniques were not dangerous and the child was far more likely to be injured if he were left to fend for himself. S.M. ex rel. B.M. v. Passaic City Bd. of Educ., OAL Dkt. No. EDS 9950-08, 2008 N.J. AGEN LEXIS 802, Emergent Relief Decision (September 11, 2008).

Special education depends on good faith and conciliatory communication and efforts by the school system and the student's family, and consistent with this principle, parties are required to engage in a resolution session, after the filing of a request for due process, but before resort to the more formal, adversarial, time consuming, and expensive litigation process before an Administrative Law Judge. Consequently, when a board of education repeatedly proposed dates for resolution sessions and invited the father of a special education student to communicate in that regard but father persistently refused and/or failed to reasonably participate in the resolution meeting, thereby frustrating and obstructing the process, the father's request for a due process hearing was dismissed. J.N. ex rel. M.N. v. Lenape Reg'l High School Dist. Bd. of Educ., OAL Dkt. No. EDS 8326-08, 2008 N.J. AGEN LEXIS 825, Final Decision (August 29, 2008).

Where the parent of a high-school student with cerebral palsy sought a comprehensive vocational assessment and functional ADL assessment to evaluate areas not specifically appraised by the school district, the district failed to follow required procedures for these specific evaluations, by not conducting the evaluation itself, nor providing the parents with information about where to obtain an independent evaluation, nor proceeding with a due process petition to prove why these evaluations were unnecessary. Even though the student was able to show that the district's actions violated its procedural obligations, she failed to prove that these violations resulted in a substantive deprivation because, even without the requested evaluations, she continued to make meaningful educational progress and both she and her parents were active participants in her IEP formulation process throughout the years. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Various settlement agreements did not trump or alter the clear language in the body of the IEP that "This student's educational disability precludes recoupment of lost skills in a reasonable period of time. Extended School Year (ESY) programming is recommended to prevent significant skill regression and should address the following area: Language, communication and occupational therapy," and student's stay-put rights pending the outcome of the due process hearing entitled him to a 2008 ESY program selected by his parents and related services in language, communication, and occupational therapy that prevent significant skill regression. C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 4899-08, 2008 N.J. AGEN LEXIS 800, Emergent Relief Decision (July 15, 2008).

Since an IEP team had determined that, in order for a 17-year-old student with severe emotional disturbances to receive a free appropriate public education, he needed to be educated in an out-of-district placement and, to one degree or another, his parents agreed that an out-of-district placement was appropriate, the board of education was granted permission to release the student's school records to potentially appropriate out-of-district placements and his parents were compelled to cooperate with intake procedures at prospective placements. The parents would be allowed to supplement the school records by forwarding any expert reports they had obtained regarding the student's psychological condition or educational status to the out-of-district schools and his in-district high school. Ramapo Indian Hills Reg'l High School Bd. of

Placement of child was inappropriate to meet his educational needs; parents entitled to private school tuition reimbursement. *J.S. v. Livingston Board of Education*, 92 N.J.A.R.2d (EDS) 94.

Day placement, not residential placement, was appropriate for multiply handicapped student. *J.B. v. Township of Montville Board of Education*, 92 N.J.A.R.2d (EDS) 65.

#### Law Review and Journal Commentaries

Out-Of-District Placement for the Special Needs Child. Michaelene Loughlin, Sherry Chachkin, 222 N.J.L.J. 43 (2003).

## SUBCHAPTER 7. RECEIVING SCHOOLS

### Case Notes

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

### 6A:14-7.1 General requirements

(a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services) and public college operated programs for students with disabilities. Receiving schools shall obtain prior written approval from the Department of Education to provide programs for students with 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 in this subchapter.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

(b) For a student 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.

(c) Programs for students with disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding age range and class size shall be requested by the district of residence board of education and determined pursuant to N.J.A.C. 6A:14-4.9. District boards of education and providers of programs under this subchapter shall maintain documentation of this approval.

(d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.

(e) Annually, providers of programs pursuant to this subchapter shall prepare and submit a report, in a format provided by the Department of Education, to the Department of Education through the county office. The report shall include, but not be limited to, the number of enrolled students by age, race, ethnicity, and additionally, the number of students whose placements were terminated during the previous school year, and, when known, the subsequent placement for each student whose placement was terminated.

(f) Out-of-State private schools for students with disabilities 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 students.

(g) The residential component of an approved private school for students with disabilities 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.

(h) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in or shall not be employed by any approved private school for students with disabilities which serves students with disabilities placed by that district board of education.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (c)1; added new (e) and recodified former (e) through (g) as new (f) through (h); throughout the section, substituted "students with disabilities" for "the disabled".

### Case Notes

Authority to contract for speech therapy services. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

Parent's due process petition seeking changes to child's IEP was dismissed as moot and parties were ordered to participate in a scheduled IEP meeting because the relief that parent sought could only be obtained through attendance and participation at an IEP meeting, and that meeting was in the process of being scheduled by the school district as required by N.J.A.C. 6A:14-3.7(h) and N.J.A.C. 6A:14-7.1. S.S. ex rel. *K.S. v. Lawnside Borough Bd. of Educ.*, OAL Dkt. No. EDS 8681-05, 2005 N.J. AGEN LEXIS 930, Final Decision (December 1, 2005).

Public school unable to compel private school to re-admit expelled student. *H.F. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 101.

### 6A:14-7.2 Approval procedures to establish a new receiving school

(a) Prior to the establishment of a receiving school for students with disabilities, an application shall be submitted to

the Department of Education according to the following schedule:

1. The applicant shall submit a description of the program and services to be offered which shall include, but not be limited to:

- i. The educational philosophy of the program;
  - ii. Characteristics of the program, which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session;
  - iii. The curriculum and materials including a description of how the core curriculum content standards will be implemented;
  - iv. A mechanism for evaluating student progress and program efficacy; and
  - v. The organizational structure, including projected number of personnel by title, job function and personnel requirements, including certification;
2. A survey of need indicating the number, age range, types of students with disabilities to be served by the proposed programs/services and the reasons these students cannot be served in the resident district, supported by documentation from local public school districts. Documentation of local school districts surveyed shall be included. The Department of Education shall determine if the program to be provided by the receiving school is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the needs assessment.

i. Any appeal of a decision to deny approval may be made to the Commissioner of Education in accordance with N.J.A.C. 6A:3;

3. Additionally, each approved private school for students with disabilities shall submit:

- i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, The Individuals with Disabilities Education Act (20 U.S.C. §§1400 et seq.) and the Rehabilitation Act of 1973 (U.S.P.L. 93-112 Section 504, 29 U.S.C. §794a);
- ii. The administrative policies and procedures of the school;
- iii. An assurance that necessary emergency procedures will be followed;
- iv. A copy of the approval of the facility by the issuing agency, including a certificate of occupancy and certification of health and fire approval;
- v. A copy of the certificate of incorporation;
- vi. Staffing information which shall include a list of professional staff who will provide services. The list

shall verify each individual's certification and license, if one is required, the function he or she will perform, and that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual; and

vii. A projected budget in accordance with N.J.A.C. 6A:23-4.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (a)2, changed N.J.A.C. reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

#### Case Notes

Exception would not be made for applicant seeking approval for a private school for the disabled, where certain potential student referrals were not received by the Office of Special Education Programs (OSEP) until after the Office had notified the applicant that its application was eight short of the minimum requisite number, necessitating rejection; to compel the OSEP to accord such preferential treatment to one applicant over others would serve to compromise the integrity of the whole application process. *Y.E.S. Academy v. N.J. State Dep't of Educ., Office of Special Educ. Programs, OAL Dkt. No. EDU 4665-07, Commissioner's Decision (August 15, 2007).*

#### 6A:14-7.3 Amendment procedures for receiving schools

(a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided or the location of its facilities by obtaining prior written approval from the Department of Education through its county offices of education.

1. To amend the policies, procedures, nature and scope of the services provided, or increase or decrease the services provided, the approved receiving school shall submit the following:

i. A copy of the revised policy and/or procedure;

ii. A revised description of the scope and nature of the services to be offered according to N.J.A.C. 6A:14-7.2(a)3iii(4); and

iii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual and the function he or she shall perform.

2. To amend the location of its facilities, an approved private school for students with disabilities shall submit a copy of the valid health, fire, HVAC inspections, occupancy and, if applicable sewerage plant.

3. In accordance with N.J.A.C. 6A:23-4.3(a)1, if an approved private school for students with disabilities seeks to expand the school and its program by opening an additional location, the school must submit an application for approval as a new private school for students with disabilities in accordance with this subchapter and receive

such approval prior to operating an approved private school in the new location.

(b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for students with disabilities, the approved private school shall provide written notification to the Department of

Education through the county office within seven calendar days of the change.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a)1iii, inserted “, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual”; in (a)2, substituted “students with disabilities” for “the disabled” and “HVAC” for “boiler”; added (a)3; in (b), substituted “students with disabilities” for “the disabled”.

provided within 10 days of the date of the IEP meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(c) Prior to a parent withdrawing a student with a disability from a receiving school, the parent shall request that the district board of education convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k).

(d) A student with a disability placed in a receiving school by the district board of education shall receive a diploma from the district board of education if the requirements of N.J.A.C. 6A:14-4.11 are met.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (d), amended N.J.A.C. reference.  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the introductory paragraph of (a) and (d); at (a)1 and (b), substituted "within 10 days of the date of the IEP meeting" for "without delay"; in (b) and (c), substituted "6A:14-2.3(k)" for "6A:14-2.3(i)2".

#### Case Notes

Parents of a four-year-old autistic child were granted emergency "stay-put" relief, pending the outcome of a due process hearing, where receiving out-of-district school sought to remove their child from its program. The sending school failed to give proper notice or convene an IEP meeting, either before or after expiration of the 10-day time period in N.J.A.C. 6A:14-7.7; and, even if the state regulation did not apply because the receiving school notified the sending school in July 2006, rather than "prior to the end of the student's academic year," the federal IDEA stay-put provision in 20 U.S.C.A. 1415 overrides state law. R.B. and C.B. ex rel. A.B. v. Great Meadows Reg'l Bd. of Educ., OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

Parents' application for emergent, "stay put" relief was not barred by the 15-day notice provision in N.J.A.C. 6A:14-2.3(h), which provides that a district board of education shall implement the proposed action unless the parents request mediation or a due process hearing within 15 days, because the parents never received proper *written* notice of the proposed change in placement, as required by N.J.A.C. 6A:14-2.3(h) and (g). R.B. and C.B. ex rel. A.B. v. Great Meadows Reg'l Bd. of Educ., OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

When analyzing a request for a "stay-put" order, the criteria set forth in N.J.A.C. 1:6A-12.1(e) for granting emergent relief are inapplicable; the federal IDEA stay-put provision in 20 U.S.C.A. 1415 is unequivocal and mandates that "the child shall remain in the then-current educational placement." R.B. and C.B. ex rel. A.B. v. Great Meadows Reg'l Bd. of Educ., OAL DKT. NO. EDS 10163-06, 2006 N.J. AGEN LEXIS 894, Emergent Relief Decision (October 12, 2006).

#### 6A:14-7.8 Fiscal management

(a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual student placement approval.

(b) The district board of education shall establish a written contract for each student with a disability it places in a

program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the student with a disability. For students placed in an approved private school for students with disabilities, the district board of education shall use the mandated tuition contract according to N.J.A.C. 6A:23.

(c) Daily transportation costs shall be paid by the district board of education.

(d) Transportation for students in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6A:27-5.2.

(e) All approved private schools for students with disabilities shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6A:23.

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Amended NJAC references throughout.  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In the first sentence of (b), substituted "student with a disability" for "disabled student"; in the last sentence of (b) and in (e), substituted "students with disabilities" for "the disabled".

#### 6A:14-7.9 Records

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6A:32 pertaining to student records. In addition:

1. All student records maintained by a receiving school under this subchapter shall be returned to the responsible district board of education when a student's program is terminated.

2. Requests for access to student records by authorized organizations, agencies or persons as stated in N.J.A.C. 6A:32 shall be directed to the chief school administrator or his or her designee of the district board of education having responsibility for the student with a disability.

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained in accordance with N.J.A.C. 6A:23 and made available to the district board of education upon request. Habitual tardiness or prolonged absences of five or more consecutive days shall be reported in writing to the chief school administrator of the district board of education or his or her designee.

(b) Student progress reports shall be submitted at least three times a year or as stipulated in the contract between the district board of education and the receiving school.

Amended by R.1998 d.527, effective November 2, 1998.  
See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

In (a)3, added "or his or her designee" at the end.  
Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a)3, amended NJAC reference.  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In the introductory paragraph of (a) and in (a)2, substituted "6A:32" for "6:3-6"; in (a)3, inserted "of five or more consecutive days"; in (b), added "between the district board of education and the receiving school" at the end.

### 6A:14-7.10 Monitoring and corrective action

(a) The Department of Education shall monitor approved private schools for students with disabilities according to N.J.A.C. 6A:14-9.1. On site monitoring shall be conducted in accordance with the schedule established by the Department.

(b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited, to the following:

1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated with State or Federal statute or rules and/or implementation of the corrective action plan.

i. An approved private school which is issued a conditional approval status may not accept new students;

2. The Department of Education may revoke approval effective at the end of a school year, when chronic or systemic noncompliance is demonstrated; and

3. The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(c) An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

Amended by R.2000 d.137, effective April 3, 2000.  
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (c), changed N.J.A.C. reference.  
Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (a), substituted "six" for "four" preceding "years".  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "students with disabilities" for "the disabled" and "in accordance with the schedule established by the Department" for "at least every six years".

## SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS AND HUMAN SERVICES, AND THE JUVENILE JUSTICE COMMISSION

### 6A:14-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6A:17-3 and the requirements of this chapter.

(b) Each State agency operating approved programs shall develop a special education plan according to N.J.A.C. 6A:14-1.2 which additionally shall include:

1. A list of all State and Federal funding sources; and
2. A separate educational budget statement for each State facility.

(c) All students with disabilities shall receive an educational program and related services based on an IEP. A student who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the IEP incorporated into the plan.

(d) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for nondisabled students. Educational programs shall operate at least 220 days each year.

(e) Each district board of education shall provide mandated student records according to N.J.A.C. 6A:32 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent shall receive notification of the release of these records to the facility. Permitted records according to N.J.A.C. 6A:32 shall be released only with consent.

(f) For a student in residence in a State facility, the responsible district board of education shall maintain the educational records sent by the State facility according to N.J.A.C. 6A:32.

(g) For a student in residence in a State facility, the responsible district board of education shall facilitate the entry of the student into the local district program, as appropriate.

(h) When a student is placed in a State facility by a public agency other than the district board of education, the State shall provide a program according to the following:

1. If the student is a student with a disability, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current individualized education program.

2. If the student is not currently classified as a student with a disability, or if the State facility does not have current school records, within 30 calendar days the State facility shall review the student's educational status and determine if referral to the child study team is required.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (e), deleted a reference to adult student.  
Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a), amended NJAC reference.  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (e) and (f), substituted "6A:32" for "6:3-6"; in (h)1 and (h)2, substituted "a student with a disability" for "disabled".

#### Case Notes

N.J.A.C. 6:28-8.1(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272 (App.Div.1985).

Approved in-state school and not out-of-state school was appropriate placement for 20-year-old autistic student. J.R. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 12.

#### 6A:14-8.2 Procedural safeguards

(a) Mediation shall be available for a student in a State facility according to N.J.A.C. 6A:14-2.6.

(b) A request for a due process hearing for a student in a State facility shall be made to the Department of Education according to N.J.A.C. 6A:14-2.7.

(c) Discipline of students with a disability shall be according to N.J.A.C. 6A:14-2.8.

(d) Surrogate parents shall be appointed according to N.J.A.C. 6A:14-2.2.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (c), substituted "students with a disability" for "disabled students".

**6A:14-8.3 Provision of programs**

(a) A residential State facility may recommend placement of a student with a disability in a local school district. Documentation of attempts to place the student in the least restrictive environment according to N.J.A.C. 6A:14-4 shall be stated in the student's IEP. Tuition shall be paid by the State facility to the local board of education where the student is placed.

(b) All personnel providing special education programs, related services, or multi-disciplinary team services shall hold the appropriate educational certificate and, if required, a license for the position in which they function.

(c) Day school programs operated by the Department of Human Services shall be provided in the following manner:

1. The Department of Human Services shall provide educational programs and related services for students with disabilities in State-operated or contracted facilities;
2. The district board of education shall be responsible for providing the services according to N.J.A.C. 6A:14-3.3 through 3.8. The day school program is responsible for implementing the IEP developed by the district board of education; and
3. The district board of education shall be responsible to monitor the student's placement at least annually to ensure the implementation of the IEP.

(d) An educational program for students with disabilities in a State residential facility shall be commensurate with those in a day school program.

(e) For students placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6A:14-2.3(k).

(f) When a student in a State facility is in need of home instruction according to N.J.A.C. 6A:16-10.1, the State facility shall implement the home instruction program.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a), substituted "4" for "4.2"; rewrote (b); in (e), substituted "(k)" for "(i)"; in (f), substituted "6A:16-10.1" for "6A:14-4.9".

**Case Notes**

N.J.A.C. 6:28-8.3(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

## SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

**6A:14-9.1 Monitoring and corrective action**

(a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey statutes, the New Jersey Administrative

Code, the approved special education plan and Federal requirements under the Individuals with Disabilities Education Act (IDEA).

1. The monitoring process shall include, but is not limited to, review of:
  - i. Provision of a free, appropriate public education in the least restrictive environment;
  - ii. Provision of transition services; and
  - iii. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent such representation is the result of inappropriate identification.

(b) The monitoring procedures may include, but are not limited to:

1. A self-assessment conducted by the program being monitored;
2. Review of data, reports and student records;
3. On-site visits;
4. Comparison of a sample of individualized education programs with the programs and services provided;
5. Development of an improvement plan by the program being monitored to address areas of noncompliance identified during the self-assessment; and
6. Audit of Federal and State funds.

(c) After the monitoring process is completed, a report shall be written and sent to the public or private agency.

(d) If the public or private agency receives a final report that indicates noncompliance in addition to any areas of need identified through self-assessment, revisions to the improvement plan shall be developed by the agency and submitted to the Department of Education for approval.

(e) The improvement plan shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed; and
2. The dates by which noncompliance will be corrected.

(f) The Department of Education shall review the improvement plan and notify the agency if it is acceptable.

(g) When an improvement 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 an improvement plan, imposition of sanctions or determination of noncom-

pliance may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

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

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

In (h), changed N.J.A.C. reference.

Amended by R.2000 d.230, effective June 5, 2000.

See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (a), added a reference to Federal requirements under IDEA.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote the section.

#### Case Notes

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education Act, cannot be appealed to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. *Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ.*, OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

#### 6A:14-9.2 Complaint investigation

(a) The State Director of the Office of Special Education Programs or designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint regarding the provision of special education and related services covered under this chapter.

(b) An organization or individual may request a complaint investigation by simultaneously submitting a written signed request to the State Director of the Office of Special Education Programs and to the educational agency against which the complaint is directed. The complaint shall include:

1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
2. The facts on which the statement is based; and
3. The time period when the alleged violation occurred.
  - i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received.

(c) The Office of Special Education Programs shall, if deemed necessary, complete an investigation within 60 calendar days after receipt of the written signed complaint and issue a report setting forth a final decision with respect to the complaint, unless the time period is extended according to (c)6 below.

1. If a party believes that a final decision includes an error that is material to the determination in the decision, the party may inform the Office of Special Education Programs and the other party in writing, within 15 days of the date of the report. The letter shall identify the asserted error and include any documentation to support the claim. The Office of Special Education Programs will determine the appropriate steps to consider the claim of error after receipt of the letter.

2. The investigation may include, but not be limited to:
  - i. Review of policies and procedures;
  - ii. Review of student record(s);
  - iii. Observation of programs;
  - iv. Interview(s);
  - v. An on-site investigation if determined necessary; and
  - vi. If the parent consents, an opportunity for the education agency to engage the parent in mediation or an alternative means of dispute resolution.

3. The complainant shall be given the opportunity to provide additional information, either orally or in writing about the allegations in the complaint.

4. The education agency against which the complaint is directed shall be provided an opportunity to respond to the complaint and, at the discretion of the Director of the Office of Special Education Programs or a designee, may be afforded an opportunity to resolve the issues in the complaint prior to issuance of an investigation report.

5. The State Director of the Office of Special Education Programs may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint or if the parent and education agency agree to mediate the dispute or engage in another means of dispute resolution.

(d) If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Office of Special Education Programs shall set aside the entire complaint until the conclusion of the hearing.

1. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and the Office of Special Education Programs shall inform the complainant to that effect.

(e) A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to all parties within 60 calendar days after receipt of the written signed complaint unless the 60-day time period is extended in accordance with (c)6 above.

(f) If the education agency is found to be in noncompliance, a corrective action plan in accordance with the directive in the report shall be developed and submitted to the Office of Special Education Programs.

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

1. Objectives, strategies and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and
2. The dates by which the noncompliance will be corrected.

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

(i) The Office of Special Education Programs shall review and verify the implementation of the corrective action plan.

(j) When a corrective action plan is not submitted, is unacceptable or is not implemented, the Office of Special Education Programs shall notify the agency of the actions it intends to take.

(k) Nothing in this section shall be construed as limiting the right of parents or adult students to seek a due process hearing with regard to issues raised in a request for complaint investigation. If a due process hearing is sought while a complaint investigation is pending, the complaint investigation with respect to all issues in the request for a due process hearing shall be halted pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed in accordance with (d) above.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Amended (b); in (c), added a new 2 and recodified former 2 as 3; added a new (d) and recodified former (d) as (e); and recodified former (e) through (i) as (f) through (j).

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Rewrote the section.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (b) through (f).

#### Case Notes

Regulation authorizing the Office of Special Education Programs (OSEP) to issue a final decision following its complaint investigation, N.J.A.C. 6A:14-9.2(c), is valid, and thus the School Board could not appeal OSEP's investigation decision to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

State special education regulations addressing complaint time limitations and procedures applicable to complaint and due process hearing request concerning the same issue mirrored language of equivalent federal regulations and satisfied federal requirements. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations concerning implementation of final decisions of state educational agency (SEA) with respect to complaint investigations sufficiently complied with federal requirement that corrective action plan be developed and all aspects of final decision be implemented, and were broad enough to encompass all needed implementation tools, despite failure to specify therein particular implementation procedures. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations governing complaint procedures, requiring development of corrective action plan, requiring that objectives and strategies for correcting each non-compliance item be set forth in such plan, and permitting the state Department of Education to take any action deemed necessary should corrective action plan be inadequate, were sufficient to conform to federal regulatory requirements that deficiencies be remediated and appropriate services provided to students with disabilities. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations requiring "a report of findings [and] conclusions" in connection with minimum state complaint procedures required determination as to whether public agency had violated any requirement of the Individuals with Disabilities Education Act (IDEA), as mandated by federal regulations, despite failure to specify particular determinations required to be made in connection with complaint procedures; state regulation's list of activities to be undertaken in investigating complaints was not exclusive, and investigation of and report on complaints of IDEA violations was clearly within its contemplated scope. Baer v. Klagholz, 771 A.2d 603 (2001).

Under state special education regulations governing notice of corrective actions intended to be taken by the state Department of Education in response to parent complaints, county office of education was required to notify a noncompliant educational agency should local education agency (LEA) fail to do so. Baer v. Klagholz, 771 A.2d 603 (2001).

Adopting Initial Decision's conclusion that the Commissioner of Education has no jurisdiction to consider an appeal from the final decision of the Office of Special Education Programs issued in response to a complaint investigation conducted under N.J.A.C. 6A:14-9.2 (adopting and modifying 2006 N.J. AGEN LEXIS 441). Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ., OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ., OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

SUBCHAPTER 10. EARLY INTERVENTION  
PROGRAMS

**6A:14-10.1 Early intervention programs serving  
children between birth and age three**

Early intervention programs shall be administered by the Department of Health and Senior Services as the lead agency in collaboration with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

**6A:14-10.2 General requirements when district boards  
of education contract with early intervention  
programs under contract with the  
Department of Health and Senior Services  
for students age three**

(a) When an IEP is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that student by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6A:14-1.1(d) 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, if required, licensed; and
4. Applications for exceptions according to N.J.A.C. 6A:14-4.9 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.

Amended by R.2003 d.387, effective October 6, 2003.

See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a)4, amended NJAC reference.

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (a)4, substituted "4.9" for "4.10".

**APPENDIX A**

Individuals with Disabilities Education Act  
Amendments of 2004

20 U.S.C. §§1415, 1412, 1414

20 U.S.C. §1415

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as

determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) **Manifestation**

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) **Determination that behavior was a manifestation**

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) **Special circumstances**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is