

special knowledge or training with respect to handicapped pupils and their educational needs, or both. Parents and children may be represented by individuals with special knowledge or training with respect to handicapped pupils and their educational needs.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

Amended by R.1995, d.176, effective March 20, 1995.  
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

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## SUBCHAPTERS 6 THROUGH 8. (RESERVED)

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### SUBCHAPTER 9. SCHEDULING

#### 1:6A-9.1 Scheduling of hearing by Office of Administrative Law

(a) At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled, the representative of the Office of Special Education Programs shall telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call.

(b) The Office of Special Education Programs shall immediately transmit the matter to the Office of Administrative Law with the transmittal form. Copies of any motions or other documents shall be filed subsequently with the assigned judge.

Amended by R.1990 d.405, effective August 6, 1990.  
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

Revised section into subsections (a) and (b).

Deleted "agreed upon by all parties" referring to later date scheduling.

Added sentence; "If the parents ... by the clerk."

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (b), substituted a reference to scheduling calls for a reference to conferences.

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Rewrote the section.

#### 1:6A-9.2 Adjournments

(a) The judge may grant an adjournment of the hearing at the request of either party. Any adjournment shall be for a specific period of time. When an adjournment is granted, the deadline for decision will be extended by an amount of time equal to the adjournment.

(b) No adjournment or delay in the scheduling of the hearing shall occur except at the request of a party.

(c) If the first scheduled date for hearing is adjourned, a conference shall be conducted on or about the originally scheduled hearing date regarding the status of the case and to determine hearings dates.

(d) A hearing scheduled pursuant to (c) above shall not be adjourned except in extraordinary circumstances.

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), inserted "of the hearing" following "adjournment".

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Added (c) and (d).

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## SUBCHAPTER 10. DISCOVERY

### 1:6A-10.1 Discovery

(a) All discovery shall be completed no later than five business days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall, to the greatest extent possible, consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (c), substituted a reference to business days for a reference to days.

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## SUBCHAPTER 11. (RESERVED)

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### SUBCHAPTER 12. MOTIONS

#### 1:6A-12.1 Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends

justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements above shall be processed by the Department in accordance with N.J.A.C. 1:6A-4.1.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief pending issuance of the decision in the matter or, for those issues specified in N.J.A.C. 1:6A-14.2(a), may order a change in the placement of a student to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2), if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested relief, the judge shall either return the parties to the Department of Education for a mediation conference under N.J.A.C. 1:6A-4.1 if both parties consent to mediation or schedule hearing dates.

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), substituted "State Director of the Office of Special Education Programs" for "Department of Education, attention Division of Special Education" in the first sentence; and rewrote (e) and (g).

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

In (b) and (g), substituted "1:6A-4.1" for "1:6A-4.2".

#### Case Notes

Parents of handicapped student were not entitled to order requiring state agencies to fund residential costs. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

District court lacked power to vacate administrative denial of funding for residential placement of handicapped student. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

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

Emotionally disturbed child and his parent were "prevailing parties". *E.P. by P.Q. v. Union County Regional High School Dist. No. 1*, D.N.J.1989, 741 F.Supp. 1144.

Emergency relief denied, as student was already enrolled in the summer program, so the matter was really one for reimbursement; in addition, there was no current evidence in the record to show the nature or extent of skill regression by the student during the two-month hiatus from the 10-month Transition to College Program. *T.D. and G.D. ex rel. G.D. v. Winslow Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4871-08, 2008 N.J. AGEN LEXIS 491, Emergent Relief Decision (July 8, 2008).

Emergent relief denied where parents requested that kindergarten student's one-to-one aide remain entirely focused on the student, who suffered from a serious peanut allergy, rather than drawing back into a shadow role and also assisting other students as necessary. Parents did not satisfy the irreparable harm element of the emergent relief test, given the vice-principal's credible testimony that the shift in approach by the aide had not diminished vigilance concerning food safety in the classroom. *D.M. and S.C. ex rel. M.M. v. Howell Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4324-08, 2008 N.J. AGEN LEXIS 349 (June 2, 2008).

Emergency relief denied concerning high school senior's ineligibility to participate as lead in the school musical due to his failing two courses; no evidence existed that the school failed to provide the modifications and accommodations required in his IEP, and the reason the student failed his science and history classes was because he failed to do his homework. *A.P. ex rel. J.T. v. Fair Lawn Bd. of Educ.*, OAL DKT. NO. EDS 3669-08, 2008 N.J. AGEN LEXIS 204, Final Decision (March 25, 2008).

Parents' emergency request for temporary placement of twin daughters requiring speech and language services in a sixth grade mainstream environment with appropriate support was denied where there was no evidence that either child would suffer irreparable educational harm if not placed in the sixth grade during the pendency of the due process petitions. E.B. and M.B. ex rel. S.B. v. Alpine Bd. of Educ., OAL DKT. NO. EDS 12330-07 & EDS 12331-07, 2007 N.J. AGEN LEXIS 833, Emergent Relief Decision (December 21, 2007).

Where a student, who had been in the school district for two years, was failing and had presented behavioral problems, the school district was entitled to emergency relief requiring psychiatric, psychological, educational, social, and speech and language assessments, and ordering the student's parents to cooperate. Edison Twp. Bd. of Educ. v. M.B. and P.B. ex rel. M.B., OAL DKT. NO. EDS 2319-07, 2007 N.J. AGEN LEXIS 181, Final Decision (April 11, 2007).

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).

Emergency relief granted, ordering the return of a communication impaired seventh-grade student to middle school after he was involved in an incident in which students were running in the hallways, causing a teacher to fall down; parent satisfied all four prongs of the test under N.J.A.C. 1:6A-12.1, where the student would suffer irreparable harm if not permitted to return, he had a legal right to attend school and receive a FAPE, there was a substantial likelihood that the penalty against the student was excessive, given the student's uncertain role in the incident, the lack of intent to hurt anyone, and the five-day suspension to another student acting in an identical manner, and more harm would result to the student than the district if the relief was not granted. T.G. ex rel. C.R. v. Mount Laurel Twp. Bd. of Educ., OAL DKT. NO. EDS 2878-06, 2006 N.J. AGEN LEXIS 437, Final Decision (May 19, 2006).

Emergent relief granted for one hour of social skills training per week as part of the interim home instruction being offered a 13-year-old student, whose parent had withdrawn him from an out-of-district placement due to alleged use of physical restraint; other issues necessitated a full hearing. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Requirements of N.J.A.C. 1:6A-12 must be read in the conjunctive and not the disjunctive; if a petitioner fails to meet the criteria of one of the four enumerated considerations, the request for emergency relief must be denied. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Parents failed to satisfy all of the criteria of N.J.A.C. 1:6A-12.1(e) for the issuance of an emergency relief order in their bid for a "stay put" order that would maintain their child's status as an out-of-district tuition student at a high school where letters between the school and the parents did not amount to a contractual agreement giving rise to any obligation on the part of the high school to accept the student for any subsequent year. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Child's need for immediate placement in private school warranted emergency relief. J.G. v. Franklin Township Board of Education, 97 N.J.A.R.2d (EDS) 13.

Child's grade placement was not issue subject to grant of emergency relief. T.R. v. Mt. Olive Board of Education, 96 N.J.A.R.2d (EDS) 125.

Emergency relief was inappropriate remedy for student denied access to educational program based on allegation of theft. T.S. v. Lenape Regional High School District Board of Education, 96 N.J.A.R.2d (EDS) 122.

Emergency relief request denied when change of classroom location was found not to constitute change of program. C.M. v. Elizabeth Board of Education, 96 N.J.A.R.2d (EDS) 75.

Emergency implementation of home schooling plan provided satisfactory interim education for mentally handicapped student during pendency of mediation process. M.F. v. Toms River Regional Board of Education, 96 N.J.A.R.2d (EDS) 67.

Emergency relief allowing classified student to participate in inter-scholastic sports denied when classified student making good academic progress without requested relief. N.W. v. Brick Township Board of Education, 96 N.J.A.R.2d (EDS) 36.

School board's request for emergency relief to implement special education services granted where reasonable probability of board

prevailing on merits existed. *Bergenfield Board of Education v. C.W.*, 96 N.J.A.R.2d (EDS) 19.

Emergency relief was not available to provide a sign-language interpreter to a hearing impaired student attending a private school while residing in district. *M.S. v. Washington Township Board*, 95 N.J.A.R.2d (EDS) 253.

Possible adjustment of computer program for multiply handicapped child's home use was more appropriately addressed by agency than by emergent relief. *M.S. v. Mount Laurel Board*, 95 N.J.A.R.2d (EDS) 220.

Adult classified special education student with disciplinary problems was precluded from attending Senior Prom. *P.P. v. Westwood Board*, 95 N.J.A.R.2d (EDS) 165.

Escalating misconduct warranted home instruction pending out-of-district placement for behavioral modification. *West Windsor v. J.D.*, 95 N.J.A.R.2d (EDS) 146.

Home instruction pending out-of-district placement for disruptive emotionally disturbed student was necessary. *Tinton Falls v. K.C.*, 95 N.J.A.R.2d (EDS) 96.

Harassment required removal from special education class and placement in comparable mainstream class. *P.D. v. Hasbrouck Heights*, 95 N.J.A.R.2d (EDS) 5.

Mother's request for emergency relief to allow her 18-year old son to attend senior graduation ceremonies denied. *A.Y. v. Millville Board of Education*, 94 N.J.A.R.2d (EDS) 132.

Denial of emergency relief; special education program provided by Board of Education was adequate. *K.M.C. v. Clearview Regional Board of Education*, 94 N.J.A.R.2d (EDS) 95.

Unresolved issue of domicile prevents grant of emergency petition for enrollment. *R.R. v. Freehold Regional High School District*, 94 N.J.A.R.2d (EDS) 38.

## SUBCHAPTER 13. PREHEARING CONFERENCES

### 1:6A-13.1 Prehearing conferences

Prehearing conferences may be scheduled in special education hearings.

Amended by R.2005 d.261, effective August 15, 2005.  
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).  
Substituted "may" for "shall not".

## SUBCHAPTER 14. CONDUCT OF CASES

### 1:6A-14.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) At the hearing, parents shall have the right to open the hearing to the public, and to have the child who is the subject of the hearing present.

(c) A verbatim record shall be made of the hearing.

(d) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

Amended by R.1992 d.331, effective September 8, 1992.  
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).  
Deleted (c); redesignated (d)-(e) as (c)-(d).

### 1:6A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

1. At the request of a board of education or public agency if the board of education or public agency maintains that it is dangerous for the child to be in the current placement during the pendency of due process proceedings; or

2. At the request of a parent if:

i. The parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability; or

ii. The parent disagrees with an order of school personnel removing a pupil with a disability from the pupil's current placement for more than 10 days or a series of removals that constitute a change in placement pursuant to 34 CFR 300.519 for a violation of school rules.

(b) Upon receipt of a request for an expedited hearing that meets the requirements of (a) above, the representative of the Department of Education shall, through telephone conference call to the parties and to the Clerk:

1. Determine whether both parties request mediation;
2. If both parties request mediation, schedule the dates for the mediation and for the hearing; and
3. If mediation is not requested, schedule dates for the hearing.

(c) The hearing date for the expedited hearing shall be no later than 10 days from the date of the hearing request. If both parties cannot agree to a hearing date within 10 days of the hearing request, a date shall be assigned by the Clerk within the required timelines.

(d) In an expedited hearing:

1. Responses to requests for discovery pursuant to N.J.A.C. 1:6A-10.1 shall be completed no later than two business days before the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least two business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

2. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than

45 days from the date of the hearing request. The time for issuance of an initial decision shall not be extended.

(e) In an expedited hearing pursuant to (a)1 and 2ii above, the judge may order placement of the pupil in an appropriate interim alternative educational setting if the judge:

1. Considers the appropriateness of the child's current placement;
2. Considers whether the board of education or public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;
3. Determines that the board of education or public agency has demonstrated by substantial evidence, that is, beyond a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; and
4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher will enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and includes services and modifications to address the behavior and that are designed to prevent the behavior from recurring.

(f) In an expedited hearing pursuant to (a)2 above, the judge shall determine whether the board of education or public agency has demonstrated that the pupil's behavior was not a manifestation of the pupil's disability.

(g) Placement in an interim alternative placement may not be longer than 45 days. The procedures set forth in this section for such placement may be repeated as necessary.

New Rule, R.2000 d.94, effective March 6, 2000.  
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.2, Interpreters, recodified to N.J.A.C. 1:6A-14.3.

### 1:6A-14.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

Recodified from N.J.A.C. 1:6A-14.2 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.3, Independent educational evaluation, recodified to N.J.A.C. 1:6A-14.4.

### 1:6A-14.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be

conducted in accordance with N.J.A.C. 6A:14 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian, (34 C.F.R. 300.503)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

Recodified from N.J.A.C. 1:6A-14.3 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.4, Transcripts, recodified to N.J.A.C. 1:6A-14.5.

Amended by R.2005 d.261, effective August 15, 2005.

See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

In (a), substituted "6A:14" for "6:28-1".

### 1:6A-14.5 Transcripts

(a) In addition to any stenographic recording, each hearing shall be sound recorded by tape recording. A parent may receive a copy of the tape recording at no cost by making a request to the Clerk.

(b) Transcripts of any hearing may be obtained pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs.

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Recodified from N.J.A.C. 1:6A-14.4 and amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (b).

## SUBCHAPTERS 15 THROUGH 17. (RESERVED)

## SUBCHAPTER 18. DECISION AND APPEAL

### 1:6A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 1:6A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request.

Amended by R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Revised text.