

3. If mediation is not requested, schedule dates for the hearing.

(c) The hearing date for the expedited hearing shall be conducted within 20 school days of the hearing request.

(d) In an expedited hearing:

1. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 10 school days of the completion of the hearing.

(e) In an expedited hearing pursuant to (a)1 and 2ii above, the judge may:

1. Return the child with a disability to the placement from which the child was removed if the judge determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or

2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 calendar days if the judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(f) Placement in an interim alternative placement may not be longer than 45 calendar 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.

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

In (a)1, deleted "during the pendency of due process proceedings" following "placement"; in (a)2ii, substituted "300.536" for "300.519"; in the introductory paragraph of (b), substituted "contact" for "through telephone conference call to" and "the Clerk to" for "to the Clerk"; in (c), substituted "conducted within 20 school days" for "no later than 10 days from the date", and deleted the last sentence; deleted former (d)1; recodified former (d)2 as (d)1; in (d)1, substituted "10 school days of the completion of the hearing" for "45 days from the date of the hearing request" and deleted the last sentence; in the introductory paragraph of (e), deleted "order placement of the pupil in an appropriate interim alternative educational setting if the judge" following "May"; deleted former (e)1, (e)2, (e)3, (e)4 and the former introductory paragraph of (f); recodified former (f)1 and (f)2 as (e)1 and (e)2; recodified former (g) as (f); and in (f), inserted "calendar".

Case Notes

Board of education was not ordered to grant a high school diploma to student who suffered from irritable bowel syndrome where he had not received the required 130 credit hours for his senior year. By denying the request for a diploma prior to his completion of 130 credit hours, irreparable harm would not be caused to the student since the diploma would be granted to him upon the completion of four additional courses; the case law was clear that, without meeting the minimum credit requirements set forth by the board of education, the student had no right to a diploma; and the interest of the board in maintaining its minimum credit requirements was extremely significant for, without being able to enforce its minimum regulations for academic achievement, the board would be unable to effectively educate students. *B.M. ex rel. A.M. v. Jackson Twp. Bd. of Educ.*, OAL Dkt. No. EDS 4717-08, 2008 N.J. AGEN LEXIS 489, Emergent Relief Final Decision (June 18, 2008).

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 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 CFR 300.502)

(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".

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

In (a), deleted "and does not routinely provide evaluations for" following "employed by", and substituted "CFR 300.502" for "C.F.R. 300.503".

1:6A-14.5 Transcripts

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

(b) A parent may obtain a transcript of any hearing pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs. A board of education may arrange to obtain a transcript by contacting the Clerk.

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).

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

In (a), deleted "by tape recording" following "recorded", and substituted "sound" for "tape"; and in (b), substituted "A parent may obtain a transcript" for "Transcripts", deleted "may be obtained" following "hearing", and inserted the second sentence.

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 after the expiration of the 30-day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c).

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.

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

Substituted "after the expiration of the 30-day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c)" for "from the date of the hearing request".

1:6A-18.2 Confidentiality

(a) In a written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence pursuant to Federal regulations, 34 CFR 300.610, at the Office of Special Education Programs.

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).

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

In (b), substituted "300.610," for "300.500 et seq."

Petition for Rulemaking.

See: 47 N.J.R. 1350(a).

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules

Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C. § 1415(i)(2).

Administrative correction: 20 U.S.C.A. 1415(e)(3) changed to 20 U.S.C.A. 1415(e)(2).

See: 22 N.J.R. 3478(a).

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

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

Revised (b).

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

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

In (b), substituted references to the Office of Special Education Programs for references to the Office of Administrative Law throughout. Administrative correction.

See: 33 N.J.R. 1209(a).

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

Deleted designation (a); deleted "A." following "U.S.C."; and deleted (b) and (c).

Case Notes

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.

1:6A-18.4 Stay of implementation

Unless the parties otherwise agree or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 CFR 300.514.

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 "or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2" following "agree".

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 "300.514" for "300.513".

Amended by R.2010 d.275, effective December 6, 2010.

See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

Deleted designation (a); substituted "CFR" for "C.F.R."; and deleted (b).

Case Notes

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. M.H. v. East Windsor Regional School District, 9 N.J.A.R. 159 (1986).

1:6A-18.5 (Reserved)

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

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

Section was "Motion to reopen hearing".