

was committed on school grounds, including on a school bus or at a school-sponsored function, or during school operating hours, the matter shall be reported as soon as possible to the principal, or in the absence of the principal, to the staff member responsible at the time of the alleged violation.

1. Either the principal or the responsible staff member shall notify the chief school administrator, who in turn shall notify, as soon as possible, the county prosecutor or other law enforcement official designated by the county prosecutor to receive such information.

2. The chief school administrator or designee shall provide to the county prosecutor or designee all known information concerning the matter, including the identity of the student or staff member involved.

(c) The designated school official, as defined by (b)1 above, shall immediately notify the designated law enforcement official whenever any school employee in the course of his or her employment develops reason to believe that a student has threatened, is planning or otherwise intends to cause death, serious bodily injury or significant bodily injury to another person under circumstances in which a reasonable person would believe that the student genuinely intends at some time in the future to commit the violent act or carry out the threat.

(d) The designated school official, as defined by (b)1 above, shall immediately notify the designated law enforcement official whenever any school employee in the course of his or her employment develops reason to believe that a crime involving sexual penetration or criminal sexual conduct has been committed on school grounds, including on a school bus or at a school-sponsored function, or by or against a student during school operating hours or during school-related functions or activities.

(e) School employees shall immediately notify the building principal and chief school administrator when in the course of their employment they develop reason to believe that a hate crime has been committed or is about to be committed on school grounds, including on a school bus or at a school-sponsored function, or has been or is about to be committed by any student, whether on or off school grounds, including on a school bus or at a school-sponsored function, and whether or not such offense was or is to be committed during operating school hours, or a student enrolled in the school has been or is about to become the victim of a hate crime, whether committed on or off school grounds, including on a school bus or at a school-sponsored function, or during operating school hours.

1. The designated school official, as defined by (b)1 above, shall promptly notify the local police department and the bias investigation officer for the county prosecutor's office in the instances described above.

2. The designated school official, as defined by (b)1 above, shall immediately notify the local police department

and the bias investigation officer for the county prosecutor's office where there is reason to believe that a hate crime that involves an act of violence has been or is about to be physically committed against a student, or there is otherwise reason to believe that a life has been or will be threatened.

(f) All incidents shall be reported under this section utilizing the Electronic Violence and Vandalism Reporting System, pursuant to N.J.A.C. 6A:16-5.3(e)1 where appropriate.

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

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

Rewrote (a), (b), (d), (e); added (f).

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

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

In (a)3, substituted "an alcohol or other drug" for "a substance"; in (a)4, substituted "pursuant to N.J.A.C. 6A:16-4.3(a), or a student suspected to have used or who may be using" for "including" and inserted "pursuant to N.J.A.C. 6A:16-4.3(b)," and "as appropriate,"; and in (c), deleted the commas following "planning" and "serious bodily injury".

#### **6A:16-6.4 Handling of alcohol or other drugs, firearms and other items**

(a) Any school employee who seizes or discovers any alcohol or other drug or item believed to be a controlled dangerous substance, including anabolic steroids, or drug paraphernalia, shall immediately notify and turn over the alcohol or other drug or item to the principal or designee.

1. The principal or designee shall immediately notify the chief school administrator or his or her designee who in turn shall notify the appropriate county prosecutor or other law enforcement official designated by the county prosecutor to receive such information.

2. The school employee, principal or designee shall safeguard the alcohol or other drug or paraphernalia against further use or destruction and shall secure the alcohol or other drug or paraphernalia until such time as the alcohol or other drug or paraphernalia can be turned over to the county prosecutor or designee.

3. The principal or designee shall provide to the county prosecutor or his or her designee all information concerning the manner in which the alcohol or other drug or paraphernalia was discovered or seized, including:

i. The identity of all persons who had custody of the substance or paraphernalia following its discovery or seizure; and

ii. The identity of any student or staff member believed to have been in possession of the substance or paraphernalia.

4. The principal or designee shall not disclose the identity of any student or staff member who voluntarily and on his or her own initiative turned over the alcohol or other drug or paraphernalia to a school employee, provided that there is reason to believe that the student or staff

member was involved with the alcohol or other drug or paraphernalia for the purpose of personal use, not distribution activities, and further provided that the student or staff member agrees to participate in an appropriate treatment or counseling program.

i. For the purposes of this section, an admission by a student or staff member in response to questioning initiated by the principal or teaching staff member, or following the discovery of a controlled dangerous substance, including anabolic steroids, or drug paraphernalia by the principal or teaching staff member shall not constitute a voluntary self-initiated request for counseling and treatment.

(b) Whenever a school employee seizes or comes upon any firearm or dangerous weapon, school officials shall:

1. In the case of a firearm, immediately advise the county prosecutor or appropriate law enforcement official, and secure the firearm pending the response by law enforcement to retrieve and take custody of the firearm; and

2. In the case of a dangerous weapon other than a firearm, immediately advise the county prosecutor or appropriate law enforcement official, and secure the dangerous weapon pending the response by law enforcement to retrieve and take custody of the dangerous weapon.

(c) School employees having custody of a firearm or dangerous weapon shall take reasonable precautions, according to district board of education procedures, to prevent the theft, destruction or unlawful use of the firearm or dangerous weapon by any person.

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

Section was "Handling of substances, firearms and other items". Substituted "alcohol or other drug" for "substance" throughout.

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

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

In (b)1, deleted "or weapon" following the second occurrence of "firearm" and "or dangerous weapon" following the third occurrence of "firearm"; and in (b)2, substituted the second occurrence of "dangerous" for "firearm or" and deleted "firearm or" preceding the third occurrence of "dangerous".

#### **6A:16-6.5 Confidentiality of student or staff member involvement in alcohol or other drug abuse intervention and treatment programs**

(a) All information concerning a student's or staff member's involvement in a school intervention or treatment program for alcohol or other drug abuse shall be kept strictly confidential, according to the requirements of 42 CFR Part 2, N.J.S.A. 18A:40A-7.1 and 7.2 and N.J.A.C. 6A:16-3.2.

(b) Nothing in this subchapter shall be construed in any way to authorize or require the transmittal of any information or records which are in the possession of a alcohol or other drug abuse counseling or treatment program.

(c) The principal or designee shall not disclose to law enforcement officials or to any person other than a member of the local school district's comprehensive alcohol, tobacco and other drug abuse program that a student or staff member has received or is receiving services through the local school district's comprehensive alcohol, tobacco and other drug abuse program, nor shall the principal or designee disclose any information, including the student's or staff member's identity or information about illegal activity, where such information was learned in the course of or as a result of services provided through the local school district's comprehensive alcohol, tobacco and other drug abuse program.

(d) Nothing in this section shall be construed to preclude the disclosure of information about illegal activity which was learned by any school employee outside of the local school district's comprehensive alcohol, tobacco and other drug abuse program.

1. Any such information about illegal activity shall be reported according to the requirements of N.J.A.C. 6A:16-6.3 and 6.4.

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

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

Section was "Confidentiality of student or staff member involvement in substance abuse intervention and treatment programs". In (a) and (b), substituted "alcohol or other drug" for "substance"; in (a), substituted "Part 2," for "and" and inserted "and N.J.A.C. 6A:16-3.2"; and in (c) and introductory paragraph of (d), inserted "school" following "local" and "tobacco" following "alcohol" throughout.

## **SUBCHAPTER 7. STUDENT CONDUCT**

### **6A:16-7.1 Code of student conduct**

(a) Each district board of education shall develop, adopt and implement a code of student conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on school buses or at school-sponsored functions, and, as appropriate, for conduct away from school grounds, in accordance with N.J.A.C. 6A:16-7.2 through 7.5, 7.8 and 7.9.

1. The code of student conduct shall be based on parent, student and community involvement which represents, where possible, the composition of the schools and community.

2. The code of student conduct shall be based on locally determined and accepted core ethical values adopted by the district board of education.

3. The district board of education shall establish a process for the annual review and update of the code of student conduct that provides for:

i. Parent, student and community involvement which represents, where possible, the composition of the schools and community; and

ii. Consideration of the findings of the annual reports of student conduct, including suspensions and expulsions, pursuant to (a)5 and 6 below, and the incidences reported under the Electronic Violence and Vandalism Reporting System, in accordance with N.J.A.C. 6A:16-5.3.

4. The code of student conduct shall be disseminated annually to all school staff, students and parents;

5. The chief school administrator shall report annually on the implementation of the code of student conduct to the district board of education at a public meeting. The annual summary shall contain, at a minimum:

i. A numerical inventory of all violations of the student behavioral expectations in the code of student conduct;

ii. Associated school responses to the violations of the student behavioral expectations;

iii. An explanation and evidence of the effectiveness of the code of student conduct. The explanation and evidence, at a minimum, shall address:

(1) The degree of effectiveness of the school district's activities in achieving the purposes of the code of student conduct, pursuant to (b) below; and

(2) The degree of implementation and effectiveness of the implementation of the contents of the code of student conduct, pursuant to (c) below; and

iv. Any proposed changes to the school district's current policies, procedures, programs or initiatives, based on the report pursuant to (a)5 above.

6. The chief school administrator shall submit a report annually to the New Jersey Department of Education on student conduct, including all student suspensions and expulsions, and the implementation of the code of student conduct, pursuant to this section, in accordance with the format prescribed by the Commissioner of Education and the Electronic Violence and Vandalism Reporting System, pursuant to N.J.A.C. 6A:16-5.3(e).

7. For students with disabilities, subject to Individualized Education Programs in accordance with 20 U.S.C. §§1400 et seq., the Individuals with Disabilities Education Improvement Act, and accommodation plans under 29 U.S.C. §§794 and 705(20), the code of student conduct shall be implemented in accordance with the components of the applicable plans.

(b) The code of student conduct shall be established to achieve the following purposes:

1. Foster the health, safety and social and emotional well-being of students;

2. Support the establishment and maintenance of civil, safe, secure, supportive and disciplined school environments conducive to learning;

3. Promote achievement of high academic standards;

4. Prevent the occurrence of problem behaviors;

5. Establish parameters for the intervention and remediation of student problem behaviors at all stages of identification; and

6. Establish parameters for school responses to violations of the code of student conduct that take into account, at a minimum, the severity of the offenses, the developmental ages of the student offenders and students' histories of inappropriate behaviors in accordance with N.J.A.C. 6A:16-7.2 through 7.5 and 7.6 as appropriate.

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

1. A description of student responsibilities that includes expectations for academic achievement, behavior and attendance, pursuant to N.J.A.C. 6A:32-8 and 13.1;

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

3. A description of students' rights to:

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

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

iii. Attendance in safe and secure school environments;

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

v. Due process appeal procedures and policies, pursuant to N.J.A.C. 6A:3-1.3 through 1.17, N.J.A.C. 6A:4 and, where applicable, N.J.A.C. 6A:14-2.7 and 2.8, and 7.2 through 7.6;

vi. Parent notification consistent with the policies and procedures established pursuant to N.J.A.C. 6A:16-6.2(b)3, 7.2, 7.3 and 7.8; and

vii. Protections pursuant to 20 U.S.C. §1232g and 34 CFR Part 99, Family Educational Rights and Privacy Act; 20 U.S.C. §1232h and 34 CFR Part 98, Protection of Pupil Rights Amendment; N.J.A.C. 6A:32-7, Student Records; 45 CFR §160, Health Insurance Portability and Accountability Act; 20 U.S.C. §6301, Title IV(A)IV §4155 of the Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act; 42

CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, School-based drug and alcohol abuse counseling; information from participants; disclosure; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Creation; Pupil Records: Maintenance and Retention, Security and Access; Regulations; Non-Liability; N.J.A.C. 6A:14-2.9, Student Records; N.J.A.C. 6A:32-7, Student Records; as well as other existing Federal and State laws pertaining to student protections;

4. A description of comprehensive behavioral supports that promote positive student development and the students' abilities to fulfill the behavioral expectations established by the district board of education, including:

- i. Positive reinforcement for good conduct and academic success;
- ii. Supportive interventions and referral services, including those at N.J.A.C. 6A:16-8;
- iii. Remediation of problem behavior that take into account the nature of the behaviors, the developmental ages of the students and the student's histories of problem behaviors and performance; and
- iv. For students with disabilities, the behavior interventions and supports shall be determined and provided pursuant to the requirements of N.J.A.C. 6A:14;

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

- i. Include a continuum of actions designed to remediate and, where necessary or required by law, to impose sanctions;
- ii. Be consistent with other responses, pursuant to N.J.A.C. 6A:16-5.5, 5.6 and 5.7 above;
- iii. Provide for the equitable application of the code of student conduct without regard to race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability or by any other distinguishing characteristic, pursuant to N.J.S.A. 10:5; and
- iv. Be consistent with the provisions of N.J.S.A. 18A:6-1, Corporal punishment of pupils;

6. A policy and procedures regarding the attendance of students in accordance with N.J.S.A. 18A:38-25 through 31 and N.J.A.C. 6A:32-8 and 13.1 and 6A:16-7.8;

7. A policy and procedures regarding intimidation, harassment and bullying in accordance with N.J.S.A. 18A:37-13 et seq. and N.J.A.C. 6A:16-7.9; and

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

(d) The code of student conduct shall include the due process procedures and policies for students and their families and shall include the provisions set forth at N.J.A.C. 6A:16-7.2 through 7.6.

(e) A district board of education may deny participation in extracurricular activities, school functions, sports or graduation exercises as disciplinary sanctions, where such measures are designed to maintain the order and integrity of the school environment.

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

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

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

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

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

In introductory paragraph of (a), inserted "adopt"; in (a)5iv, inserted "school"; in (a)7, inserted "Education Improvement"; in (b)2, inserted "secure"; in (c)1, updated N.J.A.C. reference; in (c)3iii, inserted "and secure"; in (c)3vii, substituted "6A:32-7, Student Records" for "6:3-6, Pupil Records"; in (c)4, substituted "district board of education" for "school district"; and in (c)6, updated N.J.A.C. reference.

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

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

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

#### Case Notes

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

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

#### 6A:16-7.2 Short-term suspensions

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

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

- i. When charges are denied, an explanation of the evidence forming the basis of the charges also shall be provided;
2. An informal hearing prior to the suspension in which the student is given the opportunity to present the student's version of events regarding the student's actions leading to the short-term suspension and provided notice of the school district's actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5:
  - i. The informal hearing shall be conducted by a school administrator or his or her designee;
  - ii. To the extent that a student's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process, the student may be immediately removed from the student's educational program and the informal hearing shall be held as soon as practical after the suspension;
  - iii. The informal hearing should take place even when a school staff member has witnessed the conduct forming the basis of the charge; and
  - iv. The informal hearing and the notice given may take place at the same time;
3. Oral or written notification to the student's parents of the student's removal from the student's educational program prior to the end of the school day on which the school administrator makes the decision to suspend the student, which shall include an explanation of:
  - i. The specific charges;
  - ii. The facts on which the charges are based;
  - iii. The provision(s) of the code of student conduct the student is accused of violating;
  - iv. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.1(c)3, and 7.2 through 7.6; and
  - v. The terms and conditions of the suspension.
4. Appropriate supervision of the student while waiting for the student's parent to remove the student from school during the school day; and
5. Academic instruction either in school or out of school that addresses the Core Curriculum Content Standards, pursuant to N.J.A.C. 6A:8-3.1, which may include a public education program provided in accordance with the provisions of N.J.A.C. 6A:16-9 or 10.
  - i. The instruction shall be provided within five school days of the suspension.
  - ii. Educational services provided to a student with a disability shall be provided consistent with the student's Individualized Education Program in accordance with N.J.A.C. 6A:14.

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

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

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

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

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

Rewrote (a).

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

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

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

#### Case Notes

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

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

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

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

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

**6A:16-7.3 Long-term suspensions**

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

1. Immediate notification to the student of the charges, prior to the student's removal from school;
2. An informal hearing prior to the suspension in which the student is given the opportunity to present the student's version of events regarding the student's actions leading to the long-term suspension and the school district's actions taken pursuant to N.J.A.C. 6A:16-7.1(c)2 and 5;
3. Immediate notification to the student's parents of the student's removal from school;
4. Appropriate supervision of the student while waiting for the student's parents to remove the student from school during the school day;
5. Written notification to the parents by the chief school administrator or his or her designee within two school days of the initiation of the suspension, stating:
  - i. The specific charges;
  - ii. The facts on which the charges are based;
  - iii. The student's due process rights, pursuant to N.J.A.C. 6A:16-7.3 through 7.6; and
  - iv. That further engagement by the student in conduct warranting expulsion, pursuant to N.J.S.A. 18A:37-2, shall amount to a knowing and voluntary waiver of the student's right to a free public education, in the event that a decision to expel the student is made by the district board of education, pursuant to N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.5.
    - (1) The district board of education shall request written acknowledgement of the notification of the provisions of (a)4iv above from the parents and the student subsequent to the removal from the student's educational program, pursuant to this section;
6. A list of witnesses and their statements or affidavits, if any, no later than five days prior to the formal hearing, pursuant to (a)10 below;
7. A student with a disability, a manifestation determination, pursuant to N.J.A.C. 6A:14-2.8 and the Federal regulations incorporated by reference therein;
8. Information on the right of the student to secure an attorney and legal resources available in the community identified pursuant to N.J.A.C. 6A:16-7.1(c)8;
9. Educational services, either in school or out of school, that are comparable to those provided in the public schools for students of similar grades and attainments, pursuant to N.J.S.A. 18A:38-25, which may include a pub-

lic education program provided in accordance with the provisions of N.J.A.C. 6A:16-9 or 10.

- i. The services shall be provided within five school days of the suspension.
  - ii. The district board of education shall make decisions regarding the appropriate educational program and support services for the suspended general education student, at a minimum, based on the following criteria:
    - (1) A behavioral assessment or evaluation including, but not limited to, a referral to the child study team, as appropriate;
    - (2) The results of any relevant testing, assessments or evaluations of the student;
    - (3) The student's academic, health and behavioral records;
    - (4) The recommendation of the chief school administrator, principal or other relevant school or community resource;
    - (5) Considerations of parental input; or
    - (6) Consultation with the Intervention and Referral Services team, in accordance with N.J.A.C. 6A:16-8, as appropriate.
  - iii. Educational services provided to a student with a disability shall be provided consistent with the student's Individualized Education Program, in accordance with N.J.A.C. 6A:14.
10. A formal hearing before the district board of education, which, at a minimum, shall:
- i. Be conducted by the district board of education or delegated by the board to a board committee, a school administrator or an impartial hearing officer for the purpose of determining facts or making recommendations.
    - (1) The district board of education as a whole shall receive and consider either a transcript or detailed report on such hearing before taking final action;
  - ii. Include the opportunity for the student to:
    - (1) Confront and cross-examine witnesses, when there is a question of fact; and
    - (2) Present his or her own defense and produce oral testimony or written supporting affidavits.
  - iii. Take place no later than 30 calendar days following the day the student is suspended from the general education program; and
  - iv. Result in a decision by the district board of education, which at a minimum, shall be based on the preponderance of competent and credible evidence;

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

- i. The charges considered;
- ii. A summary of the documentary or testimonial evidence from both the student and the administration that was brought before the district board of education at the hearing;
- iii. Factual findings relative to each charge and the district board of education's determination of each charge;
- iv. Identification of the educational services to be provided to the student, pursuant to (a)9 above;
- v. The terms and conditions of the suspension; and
- vi. The right to appeal the district board of education's decision regarding the student's general education program to the Commissioner of Education in accordance with N.J.S.A. 18A:37-2.4 and N.J.A.C. 6A:3-1.3 through 1.17;

12. Immediate return to the general education program if at any time it is found that the general education student did not commit the offense;

13. For a student with a disability found not to have committed the offense, the student's program shall be determined in accordance with the provisions of N.J.A.C. 6A:14; and

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

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

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

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

- i. The nature and severity of the offense;
- ii. The district board of education removal decision;

iii. The results of any relevant testing, assessments or evaluations of the student; and

iv. The recommendation of the chief school administrator, principal or director of the alternative education program or home or other in-school or out-of-school instruction program in which the student has been placed.

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

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

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

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

1. When the student is prepared to return to the general education program;
2. Whether the student shall remain in an alternative education program or receive home or other in-school or out-of-school instruction, based on the criteria set forth in (c)1i through iv above; or
3. Whether to initiate expulsion proceedings in accordance with N.J.S.A. 18A:37-2 and N.J.A.C. 6A:16-7.5.

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

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

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

(g) For a student with a disability who receives a long-term suspension, the district board of education shall proceed

in accordance with N.J.A.C. 6A:14 in determining or changing the student's educational placement to an interim or alternate educational setting.

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

2. All decisions concerning the student's educational program or placement shall be made by the student's Individualized Education Program team.

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

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

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

Amended by R.2007 d.184, effective June 4, 2007.  
See: 39 N.J.R. 294(a), 39 N.J.R. 2243(a).

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

#### Case Notes

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

#### 6A:16-7.4 Mandated student removals from general education

(a) The district board of education shall follow N.J.A.C. 6A:16-5.5 for student removals for firearms offenses.

(b) The district board of education shall follow N.J.A.C. 6A:16-5.6 for student removals for assaults with weapons offenses.

(c) The district board of education shall follow N.J.A.C. 6A:16-5.7 for student removals for assaults on district board of education members or employees.

### 6A:16-7.5 Expulsions

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

1. The procedural due process rights set forth at N.J.A.C. 6A:16-7.3 and 7.4, subsequent to a long-term suspension pursuant to N.J.A.C. 6A:16-7.3; and

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

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

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

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

1. A district board of education shall continue to provide an appropriate educational program or appropriate educational services, in accordance with N.J.A.C. 6A:16-7.5(a)2, until a final determination has been made on the appeal of the district board of education's action to expel a student.

(c) An expulsion of a student with a disability from a receiving school shall be handled in accordance with N.J.A.C. 6A:14.

### 6A:16-7.6 Conduct away from school grounds

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

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

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

3. The consequence pursuant to (a) above shall be handled in accordance with the district board of education approved code of student conduct, pursuant to N.J.A.C. 6A:16-7.1, and as appropriate, in accordance with N.J.A.C. 6A:16-7.2, 7.3 or 7.5.

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

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

In (a)1, inserted ", security" two times.

### 6A:16-7.7 Staff responsibilities

(a) District boards of education shall provide for the equitable application of the code of student conduct.

(b) District boards of education shall delineate the roles and responsibilities of each staff member in the implementation of the code of student conduct.

(c) District boards of education shall provide to all district board of education employees training annually on the code of student conduct, which shall include training on the prevention, intervention and remediation of student conduct in violation of the district board of education's code of student conduct.

1. Information on the code of student conduct shall be incorporated into the orientation program for new employees.

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

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

Section was "Staff responsibilities and rights". In introductory paragraph of (c), substituted "district board of education employees" for "school staff".

### 6A:16-7.8 Attendance

(a) Each district board of education shall develop, adopt and implement policies and procedures regarding the attendance of students, pursuant to N.J.S.A. 18A:38-25 through 31 and N.J.A.C. 6A:32-8 and 13.1, at the public schools of the district or day schools in which students are provided with equivalent instruction, according to the requirements of N.J.S.A. 18A:38-25, that shall include, at a minimum:

1. The expectations and consequences regarding the timely arrival of students to school and classes;

2. The expectations and consequences regarding attendance at school and classes;

3. A definition of unexcused absence, for the purpose of this section, that, at a minimum, shall be based on the definition of a school day, pursuant to N.J.A.C. 6A:32-8.3, and the following considerations:

i. Family illness or death;

- ii. Educational opportunities;
- iii. Written parental permission;
- iv. Excused religious observances, pursuant to N.J.S.A. 18A:36-14 through 16;

v. Where appropriate, Individualized Education Programs pursuant to 20 U.S.C. §§1400 et seq., the Individuals with Disabilities Education Improvement Act, accommodation plans under 29 U.S.C. §§794 and

(b) A school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of harassment, intimidation or bullying.

(c) A school employee, student or volunteer who has witnessed, or has reliable information that a student has been subject to harassment, intimidation or bullying shall report the incident to the appropriate school official designated by the district board of education's policy, pursuant to N.J.S.A. 18A:37-15 and (a) above.

1. A school employee who promptly reports an incident of harassment, intimidation or bullying to the appropriate school official designated by the district board of education's policy, and who makes this report in compliance with the procedures set forth in the district board of education's policy, is immune from a cause of action for damages arising from any failure to remedy the reported incident, as set forth in N.J.S.A. 18A:37-16(4)c.

(d) The district board of education shall:

1. Annually review the training needs of school district staff for the effective implementation of the harassment, intimidation and bullying policies, procedures, programs and initiatives of the district board of education and implement locally determined staff training programs consistent with the annual review of training needs and the findings of the annual review and update of the code of student conduct, pursuant to N.J.A.C. 6A:16-7.1(a)3, as determined appropriate by the district board of education.

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

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

3. Annually review the extent and characteristics of harassment, intimidation and bullying behavior in the school buildings of the school district and implement locally determined programmatic or other responses, if determined appropriate by the district board of education.

i. The programs or other services shall be planned in consultation with parents, students and other community members, including appropriate community-based social and health provider agencies, law enforcement officials, school employees, school volunteers, students and school administrators, as appropriate.

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

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

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

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

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

Rewrote (a)2x.

#### 6A:16-7.10 Student records and confidentiality

(a) When a student transfers to a public school district from another public school district, all information in the student's record related to disciplinary actions taken against the student by the school district and any information the school district has obtained pursuant to N.J.S.A. 2A:4A-60, Disclosure of juvenile information; penalties for disclosure, shall be provided to the receiving public school district, in accordance with the provisions of N.J.S.A. 18A:36-19a and N.J.A.C. 6A:32-7.5(f)10iii through v.

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

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

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

(b) When a student transfers to a private school, which includes all sectarian or nonsectarian nonprofit institutional day or residential schools that provide education for students placed by their parents and that are controlled by other than public authority, all student disciplinary records, with respect to suspensions or expulsions, shall be provided by the public school district of residence to the private school upon written request from the private school, in the same manner as such records would be provided by a public school district of residence to a public school district, pursuant to 20 U.S.C. §6301, Title IV(A)IV §4155 of the Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act.

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

(d) All records maintained in this subchapter shall conform with the requirements set forth at 20 U.S.C. §1232g and 34 CFR Part 99, Family Educational Rights and Privacy Act; 20 U.S.C. §1232h and 34 CFR Part 98, Protection of Pupil Rights Amendment; N.J.A.C. 6A:32-7, Student Records; 45 CFR §160, Health Insurance Portability and Accountability Act; 20 U.S.C. §6301, Title IV(A)IV §4155 of the Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, School-based drug and alcohol abuse counseling; information from participants; disclosure; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Creation; Pupil Records:

Maintenance and Retention, Security and Access; Regulations; Non-Liability; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws pertaining to student records and confidentiality.

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

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

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

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

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

#### Case Notes

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

## SUBCHAPTER 8. INTERVENTION AND REFERRAL SERVICES

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

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

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

2. The intervention and referral services, pursuant to N.J.S.A. 18A:46-18.1 et seq. and this subchapter, may be provided for students who have been determined to be in need of special education programs and services.

i. The intervention and referral services provided for students who have been determined to be in need of special education programs and services shall be coordinated with the student's Individualized Education Program team, as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Maintain records of all requests for assistance and all intervention and referral services action plans and all related student information, according to the requirements of 20 U.S.C. §1232g and 34 CFR Part 99, Family Educational Rights and Privacy Act; 20 U.S.C. §1232h and 34 CFR Part 98, Protection of Pupil Rights Amendment; N.J.A.C. 6A:32-7, Student Records; 45 CFR §160, Health Insurance Portability and Accountability Act; 20 U.S.C. §6301, Title IV(A)IV §4155 of the Elementary and Secondary Education Act as reauthorized under the No Child Left Behind Act; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; N.J.S.A. 18A:40A-7.1, School-based drug and alcohol abuse counseling; information from participants; disclosure; N.J.A.C. 6A:16-3.2, Confidentiality of student alcohol and other drug information; N.J.S.A. 18A:36-19, Creation; Pupil Records: Maintenance and Retention, Security and Access; Regulations; Non-Liability; N.J.A.C. 6A:14-2.9, Student records; as well as other existing Federal and State laws pertaining to student records and confidentiality.

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

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

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

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

Rewrote (a)9.

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

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

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

### **6A:16-8.3 School staff and community member roles for planning and implementing intervention and referral services**

(a) The district board of education shall establish written guidelines for the involvement of school staff and community members in each building's system of intervention and referral services, which shall, at a minimum:

1. Identify the roles and responsibilities of the building staff who participate in each building's coordinated system for planning and providing intervention and referral services, including the roles and responsibilities of staff members who identify learning, behavior or health difficulties;

2. Identify the roles and responsibilities of other school district staff for aiding in the development and implementation of intervention and referral services action plans; and

3. Identify the roles, responsibilities and parameters for the participation of community members for aiding in the development and implementation of intervention and referral services action plans.

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