

Somerville Borough Bd. of Educ., OAL DKT. EDS 8134-06, 2006 N.J. AGEN LEXIS 893, Final Decision (October 18, 2006).

### 6A:14-7.7 Termination or withdrawal from a receiving school

(a) When a receiving school is considering the termination of a student's placement prior to the end of the student's academic year, the receiving school shall immediately contact the district board of education. The district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall occur within 10 school days of the date of the notification and shall include the participation of appropriate personnel from the receiving school, including a minimum of one person who participated in making the recommendation to terminate the placement.

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

(b) When the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year, the district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided within 10 days of the date of the IEP meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents according to N.J.A.C. 6A:14-2.3. Such termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

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

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

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

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

In (d), amended N.J.A.C. reference.

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

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

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

### Case Notes

Burlington County Special Services School District (Burlington) was not required to hold a Manifestation Determination Hearing prior to suspending a student under N.J.A.C. 6A:14-2.8 when the student inflicted serious bodily injury upon another person while at school. Willingboro Township Board of Education (District) was not legally obligated to return the student to the placement from which he had been removed. It held the required Individualized Education Plan meeting two days after being notified by Burlington that it was terminating the student, and appropriate personnel were included in this meeting. Although the parent did not attend, he was contacted by telephone during the meeting but declined to participate. Lastly, although a placement was not immediately secured, this was because the parent did not provide timely consent to release the student's records to potential placements. Therefore, the District did everything within its power to comply with N.J.A.C. 6A:14-7.7, which does not require a District to return a student to the placement from which he has been removed for disciplinary reasons. *Burlington County Special Services Sch. Dist. v. D.T. Ex Rel. L.T. D.T. Ex Rel. L.T. v. Willingboro Twp. Bd. Of Educ. and Burlington County Special Serv.*, OAL DKT. NO. EDS 9218-14, OAL DKT. NO. EDS 9219-14, OAL DKT. NO. EDS 11302-14, OAL DKT. NO. EDS 12445-14, 2014 N.J. AGEN LEXIS 750, Summary Decision (October 27, 2014).

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

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

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

### 6A:14-7.8 Fiscal management

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

(b) The district board of education shall establish a written contract for each student with a disability it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for

the student with a disability. For students placed in an approved private school for students with disabilities, the district board of education shall use the mandated tuition contract according to N.J.A.C. 6A:23A-16 through 22.

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

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

(e) All approved private schools for students with disabilities shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6A:23A-16 through 22.

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

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

Amended NJAC references throughout.

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

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

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

Notice of readoption with technical change.

See: 45 N.J.R. 1909(c).

#### 6A:14-7.9 Records

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

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

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

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained in accordance with N.J.A.C. 6A:23A-16 through 22 and made available to the district board of education upon request. Habitual tardiness or prolonged absences of five or more consecutive days shall be reported in writing to the chief school administrator of the district board of education or his or her designee.

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

Amended by R.1998 d.527, effective November 2, 1998.

See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).

In (a)3, added "or his or her designee" at the end.

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

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

In (a)3, amended NJAC reference.

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

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

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

Notice of readoption with technical change.

See: 45 N.J.R. 1909(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

In (a), substituted "six" for "four" preceding "years".

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

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

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

#### Case Notes

N.J.A.C. 6A:14-9.1 et seq. and N.J.A.C. 6A:14-7.10(b)3 represent two complementary but distinct processes, and the latter clearly (and appropriately) authorizes the Department to act without observing the procedural requirements of the former in situations where student health and safety are at risk. The Department proved by a preponderance of the evidence that revocation of petitioner's approval to operate a private school for students with disabilities was warranted where school had enrolled students beyond its approved capacity and was transporting "overflow" students to a separate, unapproved site. All Can Excel Academy v. N.J. Dept. of Educ., OAL Dkt. No. EDU 1240-07, 2008 N.J. AGEN LEXIS 234, Commissioner's Decision (March 13, 2008).