

1. To initiate mediation through the Office of Special Education Programs, a written request shall be submitted to the State Director of the Office of Special Education Programs;

2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the issue(s) in dispute and the relief sought;

3. A mediation conference consistent with New Jersey law and rules shall be conducted within 20 calendar days after receipt of a written request. At the mediation conference, issues shall be identified and options for resolution shall be explored;

4. The role of the mediator is to:

i. Facilitate communication between the parties in an impartial manner;

ii. Chair the meeting;

iii. Assist the parties in reaching an agreement;

iv. Assure that the agreement complies with Federal and State law and regulation;

v. Adjourn the mediation at the request of the parties to obtain additional information or explore options; and

vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute;

5. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute;

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made;

7. Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings;

8. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation; and

9. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7(g), or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented. (See Chapter Appendix.)

#### Case Notes

Reimbursement to parents of private school expenses denied. *Wexler v. Westfield Bd. of Ed.*, 784 F.2d 176 (3rd Cir.1986), certiorari denied 107 S.Ct. 99, 479 U.S. 825, 93 L.Ed.2d 49.

Attorney fees incurred in mediation; compensability. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Attorney fees recoverable under IDEA after resolution of complaint through mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Parent could recover attorney fees recoverable following resolution of her special education complaint even though parent was allegedly to blame for forcing mediation. *E.M. v. Millville Bd. of Educ.*, D.N.J. 1994, 849 F.Supp. 312.

Parent was "prevailing party" in mediation and entitled to award of attorney fees. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Use of expert was not "necessary" and court would award only \$100 of witness' \$500 fee. *E.M. v. Millville Bd. of Educ.*, D.N.J.1994, 849 F.Supp. 312.

Claim that aide at residential facility was educationally necessary was not the same as issue decided in first hearing concerning validity of settlement agreement; res judicata did not bar educational necessity claim. *D.R. by M.R. v. East Brunswick Bd. of Educ.*, D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145.

Parents do have right to question whether program in settlement agreement meets requirements of statute if there has been change in circumstances. *D.R. by M.R. v. East Brunswick Bd. of Educ.*, D.N.J. 1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145.

Settlement agreement was unambiguous. *D.R. by M.R. v. East Brunswick Bd. of Educ.*, D.N.J.1993, 838 F.Supp. 184, on remand 94 N.J.A.R.2d (EDS) 145.

Competition in track meets was not available to handicapped student without required certificate. *C.W. v. Southern Gloucester Board*, 95 N.J.A.R.2d (EDS) 155.

Residential school's requirement that one-to-one aide be provided handicapped student for student to remain in program did not entitle parents to reopen settlement agreement. *D.R. v. East Brunswick Board of Education*, 93 N.J.A.R.2d (EDS) 31.

Implementation ordered of Stipulation of Settlement providing for mainstreaming of emotionally handicapped student at public high school. *J.J. v. Atlantic City Board of Education*, 92 N.J.A.R.2d (EDS) 251.

#### 6A:14-2.7 Due process hearings

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement or the provision of a free, appropriate public education. For students above the age of 21, any disputes regarding the provision of programs and services to these students shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

(b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation, implement an initial IEP or to release student records. The district board of education

shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

(c) A request for a due process hearing shall be made in writing to the State Director of the Office of Special Education Programs. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought.

(d) When the Office of Special Education Programs receives a request for a due process hearing the following shall occur:

1. The Office of Special Education Programs shall acknowledge receipt of the request and provide information to the parent regarding free and low cost legal services and the availability of mediation;

2. Upon receiving the acknowledgment from the Office of Special Education Programs, the parties shall begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A; and

3. Within seven calendar days of the written request, a representative from the Office of Special Education Programs shall conduct a transmittal conference.

- i. The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses;

- ii. The parties may agree to mediation at the transmittal conference according to the following:

- (1) The petitioner withdraws the request for a due process hearing;

- (2) The mediator is available to conduct the mediation;

- (3) If no agreement is reached as a result of mediation, the petitioner may resubmit the request for the due process hearing, so that the transmittal conference can continue;

- (4) If the mediator is unable to conduct the mediation at the transmittal conference, a mediation conference will be scheduled within 20 calendar days of receipt of the original request for the due process hearing;

- iii. The district board of education shall ensure that the chief school administrator or designee with the authority of the chief school administrator participates in the transmittal conference;

- iv. The transmittal conference shall be scheduled at a time and place reasonably convenient to the parties. At the discretion of the representative from the Office of Special Education Programs, the conference may be conducted by telephone;

- v. The transmittal conference may result in either withdrawal or transmittal to the Office of Administrative Law according to N.J.A.C. 1:6A; and

- vi. If the conference results in transmittal to the Office of Administrative Law:

- (1) The representative from the Office of Special Education Programs will prepare a written document of the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be forwarded immediately to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties; and

- (2) The representative from the Office of Special Education Programs shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the conference, unless a later date is granted by an administrative law judge at the request of either party. If the parent or adult student does not participate in the conference and is not available to schedule a hearing date, or the parties cannot agree to hearing dates, a date shall be assigned by the Office of Administrative Law within the required timelines.

- (e) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the receipt of the request for a hearing unless a specific adjournment is granted in response to a request by either party to the dispute.

- (f) The decision of the administrative law judge is final, binding on both parties and to be implemented without undue delay unless stayed according to N.J.A.C. 1:6A-18.4.

- (g) Either party may apply in writing for emergency relief as a part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A-12.1. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergency relief shall note that a copy was sent to the other party.

- (h) Prior to transmittal of a request for a due process hearing to the Office of Administrative Law, application for emergency relief shall be made to the State Director of the Office of Special Education Programs. After transmittal of a request for a due process hearing, any application for emergency relief shall be made directly to the Office of Administrative Law.

1. Emergency relief may be requested according to N.J.A.C. 1:6A-12.1.

i. Emergency relief may be granted if the administrative law judge determines from the proofs that:

(1) The applicant has a reasonable probability of ultimately prevailing on the merits;

(2) The student's education program will be terminated or interrupted to the extent that irreparable harm will occur; and

(3) The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

2. Emergency relief may be requested if school personnel maintain that it is dangerous for the student with a disability to be in the current placement;

i. The administrative law judge may order a change in the placement of a student with a disability to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2) as amended and supplemented. (See chapter Appendix.)

3. Emergency relief may be requested by the parent or adult student if he or she disagrees with a manifestation determination related to disciplinary action or with a decision related to placement in an interim alternative educational setting by school officials for behavior involving drugs or weapons according to 20 U.S.C. § 1415(k)(6)(A) as amended and supplemented. (See chapter Appendix.)

(i) If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent or adult student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education. On receipt of this request, implementation of the decision shall be assured.

(j) Pending the outcome of a due process hearing or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (h) above or as provided in 20 U.S.C. § 1415(k)(7) as amended and supplemented. (See chapter Appendix.)

(k) Any party may appeal the decision of an administrative law judge according to N.J.A.C. 1:6A-18.3.

Amended by R.1998 d.527, effective November 2, 1998.  
See: 30 N.J.R. 2852(a), 30 N.J.R. 3941(a).  
Rewrote (d)3ii.

#### Case Notes

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

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

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

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

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

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

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

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

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

District failed to show emergency which would justify summary declassification of pupil currently classified as perceptually impaired. *Southern Gloucester Regional School District v. C.W.*, 97 N.J.A.R.2d (EDS) 357.

No change may be made in placement of handicapped pre-schooler without concurrence of both parties. *C.W. v. Bernards Township Board of Education*, 96 N.J.A.R.2d (EDS) 359.

State-operated school offering special education was not proper party in due process hearing regarding implementation of individualized education program (IEP). *A.B. v. Jersey City Board of Education and Office of Education*, 96 N.J.A.R.2d (EDS) 295.

Untimely request precluded reimbursement due process hearing for unilateral enrollment of child in private school. *J.F. v. West Windsor-Plainsboro Board of Education*, 96 N.J.A.R.2d (EDS) 119.

Special education student subject to regular school disciplinary process if different standard not applicable. *M.G. v. Brick Township Board of Education*, 96 N.J.A.R.2d (EDS) 82.

School district may evaluate potentially educationally disabled student over parent's objection. *Morris School District v. V.S.*, 96 N.J.A.R.2d (EDS) 37.

Father's unexcused failure to appear following notice required dismissal of request for due process hearing on disciplined student's individualized education program. *G.M. v. Vineland Board*, 95 N.J.A.R.2d (EDS) 233.

Inappropriate, aggressive and hostile behavior necessitated an order permitting school district to test and evaluate child despite lack of consent from parents. *Jersey City Board v. T.W.*, 95 N.J.A.R.2d (EDS) 211.

Child study team evaluation requested by one parent was not required for progressing student in joint custody after divorce when opposed by other parent. *R.F. v. Saddle Brook Board*, 95 N.J.A.R.2d (EDS) 187.

Student with serious behavioral and educational problems required evaluation without parental consent. *Jersey City Board v. C.F.*, 95 N.J.A.R.2d (EDS) 113.

Absence of evidence that student would regress; speech and language therapy summer session. *K.K. v. Washington Township Board of Education*, 94 N.J.A.R.2d (EDS) 171.

12-year old student was given an emergency relief due process hearing and ordered to undergo a Child Study Team Evaluation. *Quinton Township Board of Education v. S.W.*, 94 N.J.A.R.2d (EDS) 130.

Petitioner's claim barred; settlement agreement. *J.L. v. Elizabeth Board of Education*, 94 N.J.A.R.2d (EDS) 119.

Application by parents for emergent relief to return their emotionally disturbed daughter to high school transitional program pending hearing was denied. *S.H. v. Lenape*, 93 N.J.A.R.2d (EDS) 87.

Mother's changing her residence precluded entitlement to due process hearing challenging refusal to place son as tuition student. *N.A. v. Willingboro Board of Education*, 92 N.J.A.R.2d (EDS) 19.

#### 6A:14-2.8 Discipline/suspension/expulsions

(a) For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension without the provision of educational services for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager.

(b) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k), as amended and supplemented. (See chapter Appendix.)

#### Case Notes

Juvenile was not denied effective assistance of counsel in delinquency adjudication for serious offenses where evidence of guilt was overwhelming. *State in Interest of S.T.*, 233 N.J.Super. 598, 559 A.2d 861 (A.D.1989).

No compensatory education entitlement for special education student undermining procedural requirements. *R.S. v. Southern Gloucester County Regional Board of Education*, 97 N.J.A.R.2d (EDS) 22.

High school student's violent behavior warranted continued suspension pending re-evaluation. *Greater Egg Harbor Board of Education v. P.N., M.N. and J.N.*, 97 N.J.A.R.2d (EDS) 12.

Teacher's petition to bring expulsion proceedings against student who assaulted her was dismissed where assault arose from student's handicap. *Barna v. Irvington Board of Education*, 96 N.J.A.R.2d (EDU) 598.

Request to return suspended kindergartener to classroom pending completion of evaluation was denied due to student's continued aggressive behavior. *M.J. v. Norwood Board of Education*, 96 N.J.A.R.2d (EDS) 193.

School board was entitled to emergency relief to continue student's suspension pending further hearing on the matter. *Brick Township Board of Education v. R.I.*, 96 N.J.A.R.2d (EDS) 107.

Student suspended for posing threat to others could not return without reevaluation. *Englewood Board v. C.M.*, 95 N.J.A.R.2d (EDS) 112.

Handicapped student's suspension upheld. *Deptford Township Board of Education v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Fight leading to disciplinary suspension not related to student's educational disability. *Deptford v. E.S.*, 95 N.J.A.R.2d (EDS) 21.

Expulsion; initial evaluation by child study team. *Edison Board of Education v. R.H.*, 94 N.J.A.R.2d (EDS) 35.

Disciplinary record required child study team evaluation over refusal of parents to give consent. *Ewing Township v. J.R.*, 93 N.J.A.R.2d (EDS) 94.

#### 6A:14-2.9 Student records

(a) All student records shall be maintained according to N.J.A.C. 6:3-6.

(b) The parent, adult student or their designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of education under N.J.A.C. 6:3-6 without unnecessary delay and before any meeting regarding the IEP.

(c) Any consent required for students with disabilities under N.J.A.C. 6:3-6 shall be obtained according to N.J.A.C. 6A:14-1.3 "consent" and 2.3(a) and (b).

#### Case Notes

Due process hearing held to contest child study team's proposal to remove child from residential school into home and local school programs; determination of appropriate placement. *Geis v. Bd. of Ed., Parsippany-Troy Hills, Morris Cty.*, 589 F.Supp. 269 (D.N.J.1984), affirmed 774 F.2d 575 (3rd Cir.1985).

Federal due process requirements (citing former N.J.A.C. 6:28-1.9). *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

No parental right to pupil records under Right to Know Law absent governing regulations from State Board of Education (citing former N.J.A.C. 6:28-2.4). *Robinson v. Goodwin*, 1975 S.L.D. 6.

Local board policy to permit parental access to classification records only by way of oral, interpretive conferences proper exercise of board's discretion (citing former N.J.A.C. 6:28-1.3 and 2.4). *D.N. Sr. v. Bd. of Ed., Closter Boro., Bergen Cty.*, 1974 S.L.D. 1332.

#### 6A:14-2.10 Reimbursement for unilateral placement by parents

(a) Except as provided in N.J.A.C. 6A:14-6.1(a), the district board of education shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district made available a free, appropriate public education and the parents elected to enroll the student in a nonpublic school or an approved private school for the disabled.

2. Preschoolers with disabilities shall have their IEPs implemented no later than age three. To assure that preschoolers with disabilities have their initial IEPs implemented no later than age three, a written request for initial evaluation shall be forwarded to the district at least 120 days prior to the preschooler attaining age three.

3. When a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as a member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.

4. For students ages five to 21, when the suspected disability includes a language disorder, the child study team, the parent, a speech-language specialist and the regular education teacher who has knowledge of the student's educational performance or the district's programs shall participate in the meeting to decide whether to evaluate and the nature and scope of the evaluation.

5. For students ages five to 21, when the suspected disability is a disorder of voice, articulation and/or fluency only, the decision to evaluate and the determination of the nature and scope of the evaluation shall be according to (e) above, except that the meeting shall include the speech-language specialist, the parent and the regular education teacher who has knowledge of the student's educational performance or the district's programs.

(f) When it is determined that an evaluation for eligibility for services under this chapter is warranted, the student shall be considered identified as potentially disabled and the disciplinary requirements at N.J.A.C. 6A:14-2.8 shall apply.

(g) Audiometric screening according to N.J.A.C. 6:29-5 shall be conducted for every student referred to the child study team for a special education evaluation.

(h) Vision screening shall be conducted by the school nurse for every student referred to the child study team for a special education evaluation.

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

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

In (e), rewrote the introductory paragraph.

#### 6A:14-3.4 Evaluation

(a) The child study team, the parent and the regular education teacher who has knowledge of the student's educational performance or the district's programs shall:

1. Review existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers, and consider the need for any health appraisal or specialized medical evaluation;

2. On the basis of the review in (a)1 above identify what additional data, if any are needed to determine:

i. Whether the student has a disability under this chapter;

ii. The present levels of performance and educational needs of the student;

iii. Whether the student needs special education and related services; and

iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum; and

3. Determine which child study team members and/or specialists shall conduct the evaluation.

(b) Prior to conducting an initial evaluation, the district shall request and obtain consent to evaluate according to N.J.A.C. 6A:14-3.3(e).

(c) After parental consent for initial evaluation of a preschool age or school age student has been received, the evaluation, determination of eligibility for services under this chapter, and, if eligible, development and implementation of the IEP for the student shall be completed within 90 calendar days.

1. If initial evaluation of a preschool age child is warranted, the district board of education shall take steps to ensure that consent to evaluate is obtained without delay.

(d) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. Such evaluation shall include assessment by at least two members of the child study team and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. Include, where appropriate, or required, the use of a standardized test(s) which shall be:

i. Individually administered;

ii. Valid and reliable;

iii. Normed on a representative population; and

iv. Scored as either standard score with standard deviation or norm referenced scores with a cutoff score; and

2. Include functional assessment of academic performance and, where appropriate, behavior. Each of the following components shall be completed by at least one evaluator:

i. A minimum of one structured observation by one evaluator in other than a testing session;

(1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the regular classroom;



- ii. An interview with the student's parent;
- iii. An interview with the teacher(s) referring the potentially disabled student;
- iv. A review of the student's developmental/educational history including records and interviews;
- v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and
- vi. One or more informal measure(s) which may include, but not be limited to, surveys and inventories; analysis of work; trial teaching; self report; criterion referenced tests; curriculum based assessment; and informal rating scales.

(e) When the suspected disability is a disorder of articulation, voice or fluency according to N.J.A.C. 6A:14-3.6(e), the speech-language specialist shall:

- 1. Meet with the parent and the regular education teacher who is knowledgeable about the student's educational performance or the district's programs to review existing data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;
- 2. Obtain consent to conduct the evaluation according to N.J.A.C. 6A:14-3.3(e)5;
- 3. Conduct an assessment according to (d)1 and 2 above. The assessment shall include written information from the classroom teacher of the educational impact created by the speech problem. Such assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (d) above; and
- 4. Prepare a written report of the results according to (f) below.

(f) A written report of the results of each assessment shall be prepared. At the discretion of the district, the written report may be prepared collaboratively by the evaluators or each evaluator may prepare an individually written report of the results of his or her assessments. Each written report shall be dated and signed by the individual(s) who conducted the assessment and shall include:

- 1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;
- 2. A statement regarding relevant behavior of the student, either reported or observed and the relationship of that behavior to the student's academic functioning; and
- 3. When a student is suspected of having a specific learning disability, the documentation of the determination of eligibility shall include a statement of:

- i. Whether the student has a specific learning disability;
- ii. The basis for making the determination;
- iii. The relevant behavior noted during the observation;
- iv. The relationship of that behavior to the student's academic performance;
- v. Educationally relevant medical findings, if any;
- vi. Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
- vii. The determination concerning the effects of environmental, cultural or economic disadvantage.

(g) The reports and assessments of child study team members or specialists from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions or professionals in private practice may be submitted to the IEP team for consideration. The IEP team may accept or reject the entire report(s) or any part of the report(s). Acceptance of the report shall be noted in writing and shall become part of the report(s) of the district. If a report or part of a report is rejected, a written rationale shall be provided to the parent or adult student by the IEP team.

(h) By June 30 of a student's last year in a program for preschoolers with disabilities, a reevaluation shall be conducted and, if the student continues to be a student with a disability, the student shall be classified according to N.J.A.C. 6A:14-3.5(c) or 3.6(a).

(i) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall transmit the summary to the child study team for the meeting according to N.J.A.C. 6A:14-3.4(a)1 to consider the need for a health appraisal or specialized medical evaluation.

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

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

Added (i).

#### Case Notes

Equal educational opportunity to institutionalized persons. *Levine v. State Dept. of Institutions and Agencies*, 84 N.J. 234, 418 A.2d 229 (1980).

Minor child's violence in school warranted evaluation. *Roselle Board of Education v. M.W.*, 97 N.J.A.R.2d (EDS) 38.

High school student's poor performance and possession of knife in school warranted evaluation. *Sterling Board of Education v. M.C.*, 97 N.J.A.R.2d (EDS) 37.

Student's poor progress warranted evaluation despite parents' opposition. *East Brunswick Board of Education v. A.M.*, 97 N.J.A.R.2d (EDS) 14.

Student's poor performance warranted evaluation of student's eligibility for special education. *Weehawken Board of Education v. E.C.*, 97 N.J.A.R.2d (EDS) 2.

Nonconsensual special education evaluation was appropriate where first grade student had difficulty finishing tasks and had engaged in inappropriate behavior since entering kindergarten. *Wayne Township v. T.F. and M.F.*, 96 N.J.A.R.2d (EDS) 336.

Student's failing grades, trancies, and disciplinary suspensions supported special education evaluation. *C.B. v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDS) 333.

Noncustodial parent lacked authority to consent to special education evaluation. *K.W. v. Sparta Board of Education*, 96 N.J.A.R.2d (EDS) 286.

Initial comprehensive special education evaluation of high school student suffering from anorexia nervosa was appropriate where student would otherwise be too old to register for high school courses. *J.C. v. Elmwood Park Board of Education*, 96 N.J.A.R.2d (EDS) 208.

Child study team evaluation of student failing all classes and exhibiting behavioral problems was ordered despite lack of parental consent. *Freehold Regional Board of Education v. M.DeL.*, 96 N.J.A.R.2d (EDS) 191.

Evaluation of student as perceptually impaired with Attention Deficit Disorder was appropriate. *Millville Board of Education v. J.J.*, 96 N.J.A.R.2d (EDS) 182.

Poor academic performance and consistent misbehavior warranted comprehensive evaluation of child over parent's consent to determine value of special education classification. *Voorhees Township Board In Interest of S.H.*, 95 N.J.A.R.2d (EDS) 228.

Intervention in form of an evaluation by child study team was necessary for child with possible educational disability notwithstanding parent's lack of consent. *Parsippany-Troy Hills Board v. B.H.*, 95 N.J.A.R.2d (EDS) 225.

Child's possible educational disability warranted comprehensive evaluation by child study team despite parent's failure to appear. *Union Township Board v. T.K.J.*, 95 N.J.A.R.2d (EDS) 224.

Inappropriate, aggressive and hostile behavior necessitated an order permitting school district to test and evaluate child despite lack of consent from parents. *Jersey City Board v. T.W.*, 95 N.J.A.R.2d (EDS) 211.

Lack of parental consent did not preclude evaluation of failing student for special education services. *South Brunswick Board v. J.R.*, 95 N.J.A.R.2d (EDS) 161.

Parent could not further delay in arranging neurological examination for impaired child. *Upper Freehold Regional v. T.S.*, 95 N.J.A.R.2d (EDS) 123.

Student with serious educational and behavioral problems with sexual overtones required emergent relief to complete child study team evaluations. *Dumont Board v. G.C.*, 95 N.J.A.R.2d (EDS) 119.

Student with serious behavioral and educational problems required evaluation without parental consent. *Jersey City Board v. C.F.*, 95 N.J.A.R.2d (EDS) 113.

Evaluation was required of student over parents' refusal upon arrest for possession of weapon. *State Operated School v. H.J.*, 95 N.J.A.R.2d (EDS) 84.

Child's emotional and cognitive difficulties required evaluation over parents' refusal. *Ewing Township v. G.R.*, 95 N.J.A.R.2d (EDS) 75.

Parents' costs for untimely assessment of neurologically impaired child were reimbursable. *A.S. v. Teaneck Board*, 95 N.J.A.R.2d (EDS) 45.

Mother's cooperation in evaluation of child for placement in special education class was required. *School District v. M.B.*, 95 N.J.A.R.2d (EDS) 8.

Referral to child study team for evaluation as to placement in special education class was necessary for student with learning disability. *Board of Education v. T.W.*, 95 N.J.A.R.2d (EDS) 6.

Student with drug problem not permitted to matriculate; Child Study Team given opportunity to conduct evaluation. *P.F. v. North Hunterdon Board of Education*, 94 N.J.A.R.2d (EDS) 213.

School Board's implementation of Independent Education Program for child classified as mildly retarded was proper. *Caldwell-West Caldwell Board of Education v. M. B.* 94 N.J.A.R.2d (EDS) 93.

Placement of neurologically impaired 6th-grader back in all special education 5th-grade classes was unnecessary. *A.B. v. Westfield Board of Education*, 94 N.J.A.R.2d (EDS) 85.

Classification of child as multiply handicapped and placement of child in a special education program. *Orange Board of Education v. M.W.*, 94 N.J.A.R.2d (EDS) 18.

Child's poor school record and mother's failure to cooperate required evaluation without parental consent. *Caldwell-West Caldwell v. M.B.*, 93 N.J.A.R.2d (EDS) 230.

Disruptive and threatening behavior justified referral of student with suspect disability for evaluation. *State-Operated School District v. D.A.*, 93 N.J.A.R.2d (EDS) 151.

Student's continued poor progress required evaluation for handicap. *Marlboro v. A.P.*, 93 N.J.A.R.2d (EDS) 149.

Disciplinary record required child study team evaluation over refusal of parents to give consent. *Ewing Township v. J.R.*, 93 N.J.A.R.2d (EDS) 94.

Immediate evaluation of ten-year-old student ordered; student displayed educational deficiencies, poor behaviors and increased distractibility; complete absence of parental cooperation. *East Brunswick Board of Education v. K.P.*, 93 N.J.A.R.2d (EDS) 77.

Child study team evaluation ordered for illiterate former street urchin. *Middletown Township Board of Education v. H.L.*, 93 N.J.A.R.2d (EDS) 19.

Evaluation by child study team warranted for 10-year-old student exhibiting aggressive behavior. *Somerville Board of Education v. L.M.*, 92 N.J.A.R.2d (EDS) 255.

Eighth-grade student referred to child study team for evaluation and possible classification. *East Brunswick Board of Education v. K.L.*, 92 N.J.A.R.2d (EDS) 248.

Board authorized to evaluate student for purposes of determining special education needs; no parental cooperation. *North Brunswick Board of Education v. S.S.*, 92 N.J.A.R.2d (EDS) 155.

Necessity of determining whether inappropriate classroom behavior was result of handicapped condition warranted completion of Child Study Team evaluation; parental opposition. *Lodi Board of Education v. N.W.*, 92 N.J.A.R.2d (EDS) 108.

Record warranted order requiring evaluations of brother-and-sister twins. *North Bergen Board of Education v. N.M. and A.M.*, 92 N.J.A.R.2d (EDS) 107.

Child Study Team evaluation was appropriate; absence of parental cooperation. *Elizabeth Board of Education v. S.S.*, 92 N.J.A.R.2d (EDS) 103.

Student's inappropriate classroom behavior warranted Child Study Team evaluation to determine whether such behavior was result of handicapped condition. *Lodi Board of Education v. N.W.*, 92 N.J.A.R.2d (EDS) 101.

Necessity for child study team evaluation demonstrated; absence of parental cooperation. Board of Education of Township of Bedminster v. J.T., 92 N.J.A.R.2d (EDS) 7.

Classification issues explained. R.D.H. v. Bd. of Ed., Flemington-Raritan Regional School District, Hunterdon Cty., 1975 S.L.D. 103, 1975 S.L.D. 111, 1976 S.L.D. 1161.

Classification and psychiatric evaluation. D.I. v. Neumann, 1974 S.L.D. 1006.

#### **6A:14-3.5 Determination of eligibility for special education and related services**

(a) When an initial evaluation is completed for a student age three through 21, a meeting according to N.J.A.C. 6A:14-2.3(i)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent or adult student. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described in N.J.A.C. 6A:14-2.3(i)1.

(b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading or math or due to limited English proficiency.

(c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 13 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.

1. "Auditorily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditorily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

i. "Deafness"—The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.

ii. "Hearing impairment"—An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.

2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

3. "Cognitively impaired" corresponds to "mentally retarded" and means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

i. "Mild cognitive impairment" corresponds to "educable" and means a level of cognitive development and adaptive behavior in home, school and community settings that are mildly below age expectations with respect to all of the following:

- (1) The quality and rate of learning;
- (2) The use of symbols for the interpretation of information and the solution of problems; and
- (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate cognitive impairment" corresponds to "trainable" and means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

- (1) The ability to use symbols in the solution of problems of low complexity;
- (2) The ability to function socially without direct and close supervision in home, school and community settings; and
- (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe cognitive impairment" corresponds to "eligible for day training" and means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.