

(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.

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).

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.

(b) If the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic or approved private elementary or secondary school without the consent of or referral by the district board of education, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment.

(c) The parents must provide notice to the district board of education of their concerns and their intent to enroll their child in a nonpublic school at public expense. The cost of reimbursement described in (b) above may be reduced or denied:

1. If at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district;

2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;

3. If prior to the parents' removal of the student from the public school, the district proposed a reevaluation of the student and provided notice according to N.J.A.C. 6A:14-2.3(e) and (f) but the parents did not make the student available for such evaluation; or

4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(d) The cost of the reimbursement for enrollment in a nonpublic school may not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if:

1. The parent is illiterate and cannot write in English;
2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;
3. The school prevented the parent from providing such notice; or
4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

SUBCHAPTER 3. SERVICES

6A:14-3.1 General requirements

(a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.

(b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant and a school social worker. All child study team members shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available during the hours students are in attendance.

(c) Specialists in the area of disability may include, but not be limited to, child study team members, as well as speech-language specialists, occupational therapists, physical

therapists, audiologists, school nurses, advance practice nurses and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational certificate and a license are required to carry out activities under this chapter, the professional shall be certified and licensed.

(d) Child study team members and, to the extent appropriate, specialists in the area of disability:

1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;
2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;
3. May deliver appropriate related services to students with disabilities;
4. May provide preventive and support services to non-disabled students; and
5. May provide services to the general education staff regarding techniques, materials and programs for students experiencing difficulties in learning. Services include, but are not limited to, the following:
 - i. Consultation with school staff and parents; and
 - ii. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties.

Case Notes

Modifying individualized educational program without consulting child study team was not improper. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

The District board of education could not abolish employee's social worker position while maintaining child study team (CST) and contracting outside to replace employee's position. Vicenzino v. Bedminster Tp. Bd. of Educ., 312 N.J.Super. 243, 711 A.2d 904, 126 Ed. Law Rep. 1092 (N.J.Super.A.D. 1998).

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.

School district did not improperly abolish Child Study Team. Mullin v. Boonton Town Board of Education, 94 N.J.A.R.2d (EDU) 583.

Parent must allow child with reading disabilities to be evaluated by child study team. Board of Educ. of Voorhees Tp. v. S.W., 93 N.J.A.R.2d (EDS) 107.

A guidance counsellor is not automatically a member of the child study team, which consists of the school psychologist, social worker and a learning disabilities teacher-consultant (citing former N.J.A.C. 6:28-1.3). Childs v. Union Twp. Bd. of Ed., 3 N.J.A.R. 163 (1980), affirmed per curiam Dkt. No. A-3603-80 (App.Div.1982).

6A:14-3.2 Case manager

(a) A case manager shall be assigned to a student when it is determined that an initial evaluation shall be conducted.

Child study team members or speech-language specialists when they act as members of the child study team shall be designated and serve as the case manager for each student with a disability.

(b) The case manager shall coordinate the development, monitoring and evaluation of the effectiveness of the IEP. The case manager shall facilitate communication between home and school and shall coordinate the annual review and reevaluation process.

(c) The case manager shall:

1. Be knowledgeable about the student's educational needs and program;
2. Be knowledgeable about special education procedures and procedural safeguards;
3. Have an apportioned amount of time for case management responsibilities; and
4. Be responsible for transition planning.

6A:14-3.3 Location, referral and identification

(a) Each district board of education shall develop written procedures for students age three through 21, including students attending nonpublic schools, who reside within the local school district to:

1. Locate students who may be disabled; and
2. Refer students who may be experiencing physical, sensory, emotional, communication, cognitive or social difficulties. The procedures shall include referral for:
 - i. Interventions in the general education program according to N.J.A.C. 6:26;
 - ii. Evaluation to determine eligibility for special education and related services; and/or
 - iii. Other educational action, as appropriate.

(b) The procedures shall provide for referral by instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of students.

(c) Interventions in the general education program to alleviate educational problems shall be provided to a student unless the student's educational problem(s) is such that direct referral to the child study team is required according to (d) below.

1. The staff of the general education program shall maintain written documentation of the implementation and effectiveness of the interventions.

2. When it is determined that interventions in the general education program have not adequately addressed the educational difficulties and it is believed that the student may be disabled, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

3. A determination whether or not to conduct an evaluation shall be made in accordance with (e) below.

(d) Interventions in the regular education program are not a prerequisite to an evaluation for services under this chapter when:

1. It can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for services under this chapter is warranted without delay; or
2. The parent or adult student makes a written request for an evaluation to determine eligibility for services under this chapter. Such a request shall be considered a referral and shall be forwarded without delay to the child study team for consideration.

(e) When a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent and the regular education teacher who is knowledgeable about the student's educational performance or the district's programs shall be convened within 20 calendar days of receipt of the written request to determine whether an evaluation is warranted and, if warranted, the child study team, the parent and the regular education teacher who is knowledgeable about the student's educational performance or the district's programs shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3(a).

1. To facilitate the transition from early intervention to preschool, a child study team member of the district board of education shall participate in the preschool transition planning conference arranged by the Department of Health and Senior Services.

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.

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).

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).

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, truancies, 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.

4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized oral language tests, where such tests are appropriate. When the area of suspected disability is language, an evaluation by a certified speech-language specialist is required. The speech-language specialist shall be considered a child study team member.

i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.

ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(e) and if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).

5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

i. An inability to learn that cannot be explained by intellectual, sensory or health factors;

ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

iii. Inappropriate types of behaviors or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiply disabled" corresponds to "multiply handicapped" and means the presence of two or more disabling conditions. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." "Multiply disabled" is characterized as follows:

i. "Multiple disabilities" means concomitant impairments, the combination of which causes such severe educational problems that programs designed for the separate disabling conditions will not meet the student's educational needs.

ii. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

7. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.

8. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

9. "Preschool disabled" corresponds to preschool handicapped and means an identified disabling condition and/or a measurable developmental impairment which occurs in children between the ages of three and five years and requires special education and related services.

10. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.

11. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations.

i. It is characterized by a severe discrepancy between the student's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematical computation;
- (6) Mathematical reasoning; and
- (7) Written expression.

ii. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.

iii. The district shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

12. "Traumatic brain injury" corresponds to "neurologically impaired" and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

13. "Visually impaired" corresponds to "visually handicapped" and means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

Case Notes

Recommended placement in new public school program did not violate the Individuals with Disabilities Education Act. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

Recommended placement in preschool handicapped program satisfied requirement for an "appropriate" education. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

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 (1986).

Juvenile's confession was not rendered inadmissible; police interrogation was not interpreted for Spanish-speaking guardian. State in Interest of J.F., 286 N.J.Super. 89, 668 A.2d 426 (A.D.1995).

Former N.J.A.C. 6:28-3.5(e)8 defining "pre-school handicapped" set aside as impermissibly narrowing statutory language and frustrating statutory policy. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

School board required to continue student's placement consistent with IEP. C.R. v. Atlantic City Board of Education, 96 N.J.A.R.2d (EDS) 384.

Six-year old who assaulted teacher and other students properly classified as emotionally disturbed. Jersey City Board of Education v. T.H., 96 N.J.A.R.2d (EDE) 358.

Special education high school student would not be reclassified from neurologically impaired to autistic. R.S. v. Ridgewood Board of Education, 96 N.J.A.R.2d (EDS) 299.

Failure of mentally retarded student to progress supported nonconsensual classification as full-time special education student and placement in moderate cognitive program. Elizabeth Board of Education v. L.H., 96 N.J.A.R.2d (EDS) 297.

Classification of student as perceptually impaired was ordered over parental objection where three child study teams agreed on student's status as disabled. Marlboro Township Board of Education v. R.F., 96 N.J.A.R.2d (EDS) 184.

Emotionally disturbed student was entitled to special education classification and home study. R.S. v. East Brunswick Board of Education, 96 N.J.A.R.2d (EDS) 177.

Reimbursement of evaluation and counseling costs for nonclassified student were denied since nonclassified students are not covered under Individuals with Disabilities Education Act. M.C. v. Franklin Board of Education, 96 N.J.A.R.2d (EDS) 175.

Student previously classified as neurologically impaired would be reclassified as educable mentally retarded after her consistently low test scores were found not to be solely due to her hyperactivity and distractibility during test taking. A.E. v. Jersey City Board of Education, 96 N.J.A.R.2d (EDS) 89.

Student not eligible for special education services when no disability found to justify such services. F.C. v. Palmyra Board of Education, 96 N.J.A.R.2d (EDS) 39.

Multi-handicapped student was placed in private academy where placement in public high school would likely result in failure. C.D. v. West Windsor-Plainsboro Board of Education, 96 N.J.A.R.2d (EDS) 22.

Residential placement for handicapped child denied when current day placement provided fair and appropriate education and residential placement not made for education reasons. B.L. v. Board of Education of the Borough of Berlin, 96 N.J.A.R.2d (EDS) 12.

Poor academic performance and behavior necessitated child's classification, program and placement even though parent was inaccessible and unresponsive. M.F. v. Piscataway Board, 95 N.J.A.R.2d (EDS) 206.

Student whose behavior was due directly to heavy marijuana use was not eligible for special education services. J.M. v. Freehold Township, 95 N.J.A.R.2d (EDS) 133.

Discrepancy between academic performance and cognitive abilities did not warrant special education classification. N.C. v. Englewood Board, 95 N.J.A.R.2d (EDS) 99.

Emotionally disturbed student; special education. South Orange-Maplewood Board of Education v. A.I., 94 N.J.A.R.2d (EDS) 168.

Parents of rebellious student; no determination was made that student was educationally disabled. B.B. v. Hillsborough Board of Education, 94 N.J.A.R.2d (EDS) 71.

Placement in full-time residential educational facility was not warranted absent an adequate measurement of mentally disabled student's potential. J.C. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 267.

Costs of private schooling for handicapped child whose communication difficulty was mild were not reimbursable. A.M. v. Board of Education, 93 N.J.A.R.2d (EDS) 133.

Record supported classification of child as neurologically-impaired; placement in one $\frac{1}{2}$ day kindergarten class and one $\frac{1}{2}$ day neurologically-impaired class. D.M. v. Union City Board of Education, 92 N.J.A.R.2d (EDS) 143.

Student's asthma did not adversely affect him so as to prevent him from receiving adequate instruction in regular school program; not chronically ill. Hopewell Valley Board of Education v. S.L., 92 N.J.A.R.2d (EDS) 91.

Chronically ill student not special education student entitled to related service of transportation. R.F. v. Hackensack Board of Education, 92 N.J.A.R.2d (EDS) 59.

Recovering anorexic was no longer "emotionally disturbed" or "chronically ill". J.C. v. Elmwood Park Board of Education, 92 N.J.A.R.2d (EDS) 25.

Ten-year-old student perceptually impaired; implementation of individualized educational program ordered. In Matter of S.R., 92 N.J.A.R.2d (EDS) 4.

Vision and hearing difficulties did not render student classifiable as handicapped. A.K. v. Clinton Town Board of Education, 92 N.J.A.R.2d (EDS) 1.

Former regulations silent on reimbursement to parents. Holmdel Bd. of Ed. v. G.M., 6 N.J.A.R. 96 (1983).

Proper classification under former N.J.A.C. 6:28-1.2(g) of multiply handicapped pupil. A.N. v. Clark Bd. of Ed., 5 N.J.A.R. 152 (1983).

New York resident's child, domiciled in New Jersey, not entitled to New Jersey free education. V.R. v. Bd. of Ed., Hamburg Boro., Sussex Cty., 2 N.J.A.R. 283 (1980).

Expulsion for disorderly and disruptive behavior. J.P. v. Bd. of Ed., Matawan-Aberdeen Regional School District, 1979 S.L.D. 382, 1979 S.L.D. 389.

Treatment of mainstreaming concept under former N.J.A.C. 6:28-2.1. O'Lexy v. Bd. of Ed., Deptford Twp., Gloucester Cty., 1972 S.L.D. 641.

6A:14-3.6 Determination of eligibility for speech-language services

(a) "Eligible for speech-language services" means a speech and/or language disorder as follows:

1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences or the influence of a foreign language, which adversely affects a student's educational performance; and/or

2. A language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c)4 and the student requires speech-language services only.

(b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(e). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.

2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.

3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

(c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(i)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent or adult student.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(i)2. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results and the service provider at the IEP meeting. The speech-language specialist shall not serve also as the agency representative at the IEP meeting.

(e) When a student has been determined eligible for speech-language services and other disabilities are suspected or other services are being considered, the student shall be referred to the child study team.

6A:14-3.7 Individualized education program

(a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.

1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district.

(b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14-2.3(i)2 for students classified eligible for special education and related services or according to N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.

(c) When developing the IEP, the IEP team shall:

1. Consider the strengths of the student and the concerns of the parents for enhancing the education of their child;

2. Consider the results of the initial evaluation or most recent evaluation of the student;

3. In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior;

4. In the case of a student with limited English proficiency, consider the language needs of the student as related to the IEP;

5. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, and current and projected needs for instruction in Braille that such instruction is not appropriate;

6. Consider the communication needs of the student;

7. In the case of a student who is deaf or hard of hearing consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of opportunities for direct instruction in the student's language and communication mode;

8. Consider whether the student requires assistive technology devices and services; and

9. Beginning at age 14, consider the need for technical consultation from the Division of Vocational Rehabilitation Services, Department of Labor.

(d) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

1. A statement of the student's present levels of educational performance, including, but not limited to:

i. How the student's disability affects the student's involvement and progress in the general curriculum; or

ii. For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;

2. A statement of measurable annual goals that shall be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs. Such measurable annual goals shall include benchmarks or short-term objectives related to:

i. Meeting the student's needs that result from the student's disability to enable the student to be involved

in and progress in the general education curriculum; and

ii. Meeting each of the student's other educational needs that result from the student's disability;

3. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or a statement of the program modifications or supports that shall be provided for school personnel on behalf of the student:

i. To advance appropriately toward attaining the annual goals;

ii. To be involved and progress in the general education curriculum according to (d)1 above and to participate in extracurricular and other nonacademic activities; and

iii. To be educated and participate with other students with disabilities and nondisabled students;

4. An explanation of the extent, if any, to which the student shall not participate with nondisabled students in the general education class and in extracurricular and nonacademic activities;

5. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.

i. If the IEP team determines that the student shall not participate in a particular Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student and a statement of how that student shall be assessed;

6. A statement which specifies the projected date for the beginning of the services and modifications described in (d)3 above, and the anticipated frequency, location, and duration of those services and modifications. For in-class resource programs, the IEP shall specify the frequency and amount of instructional time the in-class resource teacher is present in the class;

7. A statement of the State and local graduation requirements that the student shall be expected to meet. If a student with a disability is exempted from local and State high school graduation requirements, the statement shall include:

i. A rationale for the exemption based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.12; and

ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.

8. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;

9. Beginning at age 14, and updated annually, a statement of the transition service needs of the student under the applicable parts of the student's IEP that focuses on the student's courses of study including, when appropriate, technical consultation from the Division of Vocational Rehabilitation Services, Department of Labor;

10. For students with disabilities age 16 and over, or younger if deemed appropriate, a statement of needed transition services including when appropriate, a statement of the interagency responsibilities, or any needed linkages. Transition services are defined in N.J.A.C. 6A:14-1.3.

i. The transition services as defined in N.J.A.C. 6A:14-1.3 shall be based on the individual student's needs, taking into account the student's preferences and interests and shall include:

(1) Instruction;

(2) Related services;

(3) Community experiences;

(4) The development of employment and other post-school adult living objectives; and

(5) If appropriate, acquisition of daily living skills and functional vocational evaluation;

11. If the participants in the IEP meeting determine that transition services shall not be needed in one or more of the specified areas in (d)10i(1) through (5) above, a statement to that effect and the basis upon which the determination was made;

12. The person(s) responsible to serve as a liaison to post-secondary resources and make referrals to the resources as appropriate. If the student with educational disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;

13. Beginning at least one year before the student reaches age 18, a statement that the student has been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;

14. A statement of how the student's progress toward the annual goals described in (d)2 above will be measured; and

15. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress.

(e) The IEP for the student classified as eligible for speech-language services shall include (d)1 through 6, 14 and 15 above. When appropriate, (d)9, 10 and 13 above shall be included. The statement of the current educational status in (d)1 above shall be a description of the student's status in speech-language performance. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.

(f) If an agency other than the district board of education fails to provide the transition services included in the student's individualized education program, the district board of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.

(g) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(h) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.

1. The annual review of the IEP for a preschool student with educational disabilities shall be completed by June 30 of the student's last year in the preschool program.

2. The annual review of the IEP for an elementary school student with educational disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.

(i) The IEP team shall review:

1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;

3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;

4. The student's anticipated needs; or

5. Other relevant matters.

(j) Signatures of those persons who participated in the development of the IEP shall be maintained and a copy of the IEP shall be provided to the parents.

(k) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained or a due process hearing decision is issued. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3(e) and (f).

Case Notes

Failure to mainstream to maximum extent may not necessarily mean that school has discriminated on basis of handicap in violation of the Rehabilitation Act. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.)1993, 995 F.2d 1204.

Failure to meet burden of proving by preponderance of the evidence that child could not be educated in regular classroom. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.)1993, 995 F.2d 1204.

There is presumption in favor of placing child, in neighborhood school. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., C.A.3 (N.J.)1993, 995 F.2d 1204.

Recommended placement in new public school program did not violate the Individuals with Disabilities Education Act (IDEA). Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

Recommended placement in preschool handicapped program satisfied requirement for an "appropriate" education. Fuhrmann on Behalf of Fuhrmann v. East Hanover Bd. of Educ., C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

"Progress key" method of setting out educational objectives and student's progress toward those objectives, as employed in Individual Education Program (IEP) prepared by school district for severely disabled student, did not satisfy procedural requirements of Individuals with Disabilities Education Act (IDEA) and New Jersey law with respect to provision of statement of annual goals with specific measurable objectives, and of evaluation criteria related to those goals and objectives, despite fact that "progress key" method had been approved by state Department of Education. D.B. v. Ocean Tp. Bd. of Educ., 985 F.Supp. 457 (D.N.J. 1997).

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.

School district improperly failed to consider less restrictive placements. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Violation of Individuals With Disabilities Education Act; failure to provide adequate supplementary aids and services to kindergarten student. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Behavior problems during kindergarten year were not basis for placement of child in segregated special education class. Oberti by

Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322.

Placement in segregated, self-contained special education class was flawed Individualized Education Program. Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist., D.N.J.1992, 789 F.Supp. 1322.

Regulation governing education of handicapped students impermissibly narrowed scope of Individuals with Disabilities Education Act (IDEA) with respect to provision of assistive technology and services; regulation failed to expressly or impliedly incorporate federal requirements and did not adequately define crucial terms. Matter of Adoption of Amendments to N.J.A.C. 6:28-2.10, 3.6, and 4.3, 305 N.J.Super. 389, 702 A.2d 838 (A.D. 1997).

Focus of appropriateness is on program offered and not on program that could have been provided. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Standard of appropriateness is whether program allows child "to best achieve success in learning." Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

Program was deficient where its goals could not be objectively evaluated. 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. Fallon v. Bd. of Ed., Scotch Plains-Fanwood School District, Union Cty., 185 N.J.Super. 142, 447 A.2d 607 (Law Div.1982).

Regulations of the State Board of Education adopted. New Jersey Assn. for Retarded Citizens, Inc. v. State Dept. of Human Services, 89 N.J. 234, 445 A.2d 704 (1982).

Modification of special education program for student with articulation disability did not violate her federal rights. Norwood Board of Education v. C.C., 96 N.J.A.R.2d (EDS) 108.

Individualized education program sufficient if in compliance with statutory order. C.L. v. State-Operated School District of Jersey City, 96 N.J.A.R.2d (EDS) 83.

Request for extended day supplemental instruction and extended school year denied when classified student's individualized education program (IEP) found sufficient without such services. S.R. v. Manasquan Board of Education, 96 N.J.A.R.2d (EDS) 32.

Child with increasing difficulties in reading and spelling required perceptually impaired classification to provide him with necessary support in a special education program. Spring Lake Board v. P.M., 95 N.J.A.R.2d (EDS) 267.

Neighborhood school with separated first grade classes was most appropriate placement for perceptually impaired student whose attention was easily distracted. I.M. v. Atlantic City Board, 95 N.J.A.R.2d (EDS) 250.

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.

Perceptually impaired child was entitled to an extended school year in form of five hours per week of summer tutorial assistance with reasonable and necessary travel expenses. C.G. v. Old Bridge Board, 95 N.J.A.R.2d (EDS) 221.

Agreement with parent and individualized educational program both established responsibility of school board for orthopedically handicapped child's occupational and physically therapy during summer months. West Milford v. C.F., 95 N.J.A.R.2d (EDS) 204.

Behavioral difficulties of disabled student precluded mainstreaming in regular school setting. J.T. v. Collingswood Board, 95 N.J.A.R.2d (EDS) 129.

Student with attention deficit disorder was more appropriately placed in private school. R.S., A Minor v. West Orange Board, 95 N.J.A.R.2d (EDS) 59.

Disabilities of emotionally disturbed and gifted student were not sufficient to warrant removal from regular setting. Matawan-Aberdeen v. R.C., A Minor, 95 N.J.A.R.2d (EDS) 29.

Current placement in public school system, rather than residential placement, was more appropriate for multiply handicapped child. J.M. v. Board of Education, 95 N.J.A.R.2d (EDS) 10.

Classified student entitled to transfer from special education class to comparable mainstream class. P.D. v. Hasbrouck Heights Board of Education, 95 N.J.A.R.2d (EDS) 5.

Teachers could amend individualized educational plan to assist neurologically impaired child during epileptic seizures. S.G. v. West Orange, 95 N.J.A.R.2d (EDS) 1.

Deaf student entitled to attend summer school. R.C. v. Jersey City State-Operated School District, 94 N.J.A.R.2d (EDS) 166.

Request for an extended school year program was denied for multiply handicapped 14-year old. J.B. v. Middletown Township Board of Education, 94 N.J.A.R.2d (EDS) 129.

Denial of emergency transfer of emotionally disturbed child to prior school was proper. A.W. v. Jefferson Township Board of Education, 94 N.J.A.R.2d (EDS) 51.

Request to modify special education student's individual education plan was properly denied. E.J. v. Mansfield Board of Education, 94 N.J.A.R.2d (EDS) 3.

Classification of 15-year-old child born with Down's syndrome as TMR and to recommend placement in TMR/EMR program at high school was appropriate. J.B. v. West Orange Board of Education, 93 N.J.A.R.2d (EDS) 294.

Educational needs of 4-year-old autistic child were met by placement in preschool handicapped program. K.M. v. Franklin Lakes, 93 N.J.A.R.2d (EDS) 213.

Personalized educational program and support services were sufficient to allow handicapped student to make significant educational progress. J.J.K. v. Union County Board, 93 N.J.A.R.2d (EDS) 161.

Significant regression required extension of school year for multiply handicapped student. J.C. v. Wharton, 93 N.J.A.R.2d (EDS) 152.

Student's explosive and violent behavior required placement in structured educational environment. Ocean City v. J.W., 93 N.J.A.R.2d (EDS) 147.

Severely disabled child required school district to comply with Individualized Education Policy in order to deliver a free and appropriate education. E.M., a Child v. West Orange, 93 N.J.A.R.2d (EDS) 111.

County region school district failed to establish that self-contained Trainable Mentally Retarded program at in-district school was appropriate educational program for Downs Syndrome student. A.R. v. Union County Regional High School District, 93 N.J.A.R.2d (EDS) 48.

Record established that Individualized Education Program for 10-year-old neurologically impaired student should be implemented. Jersey City School District v. N.G., 93 N.J.A.R.2d (EDS) 28.

Program designed and implemented by child study team was adequate; expenditures for outside tutoring not reimbursable. S.A. v. Jackson Board of Education, 92 N.J.A.R.2d (EDS) 256.

Appropriate placement for 12-year-old multiply handicapped student was Township public school system; appropriate individualized educational program could be developed. T.H. v. Wall Township Board of Education, 92 N.J.A.R.2d (EDS) 227.

Evidence supported in-district placement of neurologically impaired student; parents' preference for out-of-district placement only one factor in decision. *S.A. v. Board of Education of Township of North Brunswick*, 92 N.J.A.R.2d (EDS) 220.

Record established that current day placement was least restrictive and appropriate education for emotionally disturbed 11-year-old boy. *R.R. v. Mt. Olive Board of Education*, 92 N.J.A.R.2d (EDS) 205.

Record established that multiply handicapped student's educational needs could not be met by perceptually impaired class offered by board of education. *Alloway Township Board of Education v. M.P.*, 92 N.J.A.R.2d (EDS) 202.

Parents not entitled to reimbursement for placement at nonpublic school; flaws in Individualized Education Program not result in significant harm; no showing that academic program of school met requirements of Program. *N.P. v. Kinnelon Board of Education*, 92 N.J.A.R.2d (EDS) 190.

Placement of attention deficit disorder student in regional school district program was most appropriate and least restrictive placement. *T.P. v. Delaware Valley Board of Education*, 92 N.J.A.R.2d (EDS) 175.

Placement at nonpublic school not authorized; no valid individualized education program. *M.Y. v. Fair Lawn Board of Education*, 92 N.J.A.R.2d (EDS) 163.

Perceptually impaired student not provided with appropriate education; private school tuition reimbursement. *J.H. v. Bernardsville Board of Education*, 92 N.J.A.R.2d (EDS) 147.

Student classified as socially maladjusted was entitled to emergent relief authorizing him to participate in high school graduation ceremonies. *B.M. v. Kingsway Regional Board of Education*, 92 N.J.A.R.2d (EDS) 130.

Appropriate placement of 6-year-old, neurologically impaired student was in self-contained neurologically impaired special education class at in-district school. *A.F. v. Roselle Board of Education*, 92 N.J.A.R.2d (EDS) 118.

Mainstreaming sixth grade student for remainder of school year not shown to be appropriate. *D.E. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 116.

Out-of-state residential school appropriate placement for 16-year-old boy who was auditorily and emotionally impaired. *J.P. v. Metuchen Board of Education*, 92 N.J.A.R.2d (EDS) 110.

Individualized Education Plan recommending that perceptually impaired student be educated at public middle school was appropriate. *Passaic Board of Education v. E.G.*, 92 N.J.A.R.2d (EDS) 86.

Morning preschool handicapped class placement sufficient. *M.G. v. East Brunswick Board of Education*, 92 N.J.A.R.2d (EDS) 84.

Placement of hearing-impaired child; local elementary school appropriate. *A.M. v. Madison Board of Education*, 92 N.J.A.R.2d (EDS) 51.

Former regulations silent on reimbursement, although sanctioned by Commissioner. *Holmdel Bd. of Ed. v. G.M.*, 6 N.J.A.R. 96 (1983).

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Under former N.J.A.C. 6:28-4.3 and 4.8, a school board is responsible for residential costs when an appropriate nonresidential placement is not available. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

Disparate treatment of neurologically versus perceptually impaired pupils (citing former regulations.). *M.D. v. Bd. of Ed., Rahway, Union Cty.*, 1976 S.L.D. 323, 1976 S.L.D. 333, 1977 S.L.D. 1296.

6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to deter-

mine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if conditions warrant or if the student's parent or teacher requests the reevaluation. When a reevaluation is conducted sooner at the request of a parent or teacher, or because conditions warrant, the reevaluation shall be completed without undue delay.

(b) The IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data according to N.J.A.C. 6A:14-3.4(a)2 and administer such tests and procedures needed to determine:

i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

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.

2. If the IEP team determines that no additional data are needed to determine whether the student continues to be a student with a disability, the district board of education:

i. Shall provide notice according to N.J.A.C. 6A:14-2.3(e) and (f) to the student's parents of that determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and

ii. Shall not be required to conduct such an assessment unless requested by the student's parents;

3. If a reevaluation is warranted, the IEP team shall determine which child study team members and/or specialists shall conduct the reevaluation.

(c) Prior to conducting any reevaluation of a student with a disability, the district board of education shall obtain consent from the parent or adult student according to N.J.A.C. 6A:14-2.3(a).3.

(d) Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(d)1 and 2 or 3.4(e), as appropriate.

(e) A reevaluation shall be conducted when a change in eligibility is being considered.

(f) When a reevaluation is completed:

1. A meeting of the student's IEP team according to N.J.A.C. 6A:14-2.3(i)2 or 3.6(c) shall be conducted to determine whether the student continues to be a student

with a disability. A copy of the evaluation report(s) and documentation of the eligibility shall be given to the parent or adult student.

2. If the student remains eligible, an IEP team meeting according to N.J.A.C. 6A:14-2.3(i)2 or 3.6(d) shall be conducted to review and revise the student's IEP.

Case Notes

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.

There was no significant change in student's placement; board of education was not obligated to secure new placement and develop new individualized education plan upon student's expulsion. Field v. Haddonfield Bd. of Educ., D.N.J.1991, 769 F.Supp. 1313.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. K.J. v. Runnemede Board of Education, 95 N.J.A.R.2d (EDS) 257.

School board's current out-of-district dayschool placement, rather than residential placement requested by parents, was most appropriate placement for neurologically impaired student with aggressive and disruptive behavior. B.C. v. Flemington-Raritan Board, 95 N.J.A.R.2d (EDS) 255.

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.

Nosebleeds did not pose serious enough problem to warrant emergent relief in form of home instruction. Mount Laurel Board v. C.S., 95 N.J.A.R.2d (EDS) 110.

Student with aggressive behavior was withdrawn from school pending re-evaluation in order to protect fellow students. Brick Township v. P.M., 95 N.J.A.R.2d (EDS) 83.

Scores and assessments established need to change student's classification to multiply handicapped. L.R. v. North Plainfield, 95 N.J.A.R.2d (EDS) 72.

Current placement in public school system, rather than residential placement, was more appropriate for multiply handicapped child. J.M. v. Board of Education, 95 N.J.A.R.2d (EDS) 10.

Reevaluation of disabled child was proper. P.B. v. Wayne Board of Education, 94 N.J.A.R.2d (EDS) 69.

Reclassification of multiply handicapped child as eligible for day training was improper. A.V. v. Branchburg Board of Education, 94 N.J.A.R.2d (EDS) 62.

Returning child to mainstream school was appropriate. D.F. v. Carteret Board of Education, 94 N.J.A.R.2d (EDS) 19.

Returning child to mainstream school; child was no longer multiply handicapped. D.F. v. Carteret Board of Education, 94 N.J.A.R.2d (EDS) 19.

Classification of neurologically impaired student changed to emotionally disturbed. D.I. v. Teaneck, 93 N.J.A.R.2d (EDS) 237.

6A:14-3.9 Related services

(a) Related services including, but not limited to, counseling, occupational therapy, physical therapy and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.

2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.

3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.

4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and/or licensed therapist in accordance with all applicable State statutes and rules.

5. A district board of education may contract for the provision of counseling services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.

6. Recreation shall be provided by certified school personnel.

7. Transportation shall be provided as follows:

i. The district board of education shall provide transportation as required in the IEP. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school;

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school;

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a student assigned; and

iv. For students with disabilities below the age of five, safety belts or restraint systems are required.

8. Other related services shall be provided as specified in the student's IEP.

6A:14-4.2 Placement in the least restrictive environment

(a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:

1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
2. Special classes, separate schooling or other removal of a student with a disability from the student's regular class occurs only when the nature or severity of the educational disability is such that education in the student's regular class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily.
3. A full continuum of alternative placements according to N.J.A.C. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;
4. Placement of a student with a disability is determined at least annually;
5. Placement is based on his or her individualized education program;
6. Placement is provided in appropriate educational settings as close to home as possible;
7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not disabled; and
8. Consideration is given to:
 - i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
 - ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
 - iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class.

Case Notes

Failure to mainstream to maximum extent may not necessarily mean that school has discriminated on basis of handicap in violation of the Rehabilitation Act. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

Failure to meet burden of proving by preponderance of the evidence that child could not be educated in regular classroom. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

There is presumption in favor of placing child, in neighborhood school. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, C.A.3 (N.J.)1993, 995 F.2d 1204.

Recommended placement in new public school program did not violate the Individuals with Disabilities Education Act. *Fuhrmann* on

Behalf of *Fuhrmann v. East Hanover Bd. of Educ.*, C.A.3 (N.J.)1993, 993 F.2d 1031, rehearing denied.

School district improperly failed to consider less restrictive placements. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Violation of Individuals With Disabilities Education Act; failure to provide adequate supplementary aids and services to kindergarten student. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 801 F.Supp. 1392, order affirmed and remanded 995 F.2d 1204.

Behavior problems during kindergarten year were not basis for deciding to place child in segregated special education class. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

Individuals with Disabilities Education Act imposes obligations on school districts regarding placement of disabled children in regular classrooms. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

Placement in segregated, self-contained special education class was flawed Individualized Education Program. *Oberti by Oberti v. Board of Educ. of Borough of Clementon School Dist.*, D.N.J.1992, 789 F.Supp. 1322.

State board's guidelines for admission to school of children with acquired immune deficiency syndrome (AIDS) null and void as improper rulemaking. *Bd. of Ed., Plainfield, Union Cty. v. Cooperman*, 209 N.J.Super. 174, 507 A.2d 253 (App.Div.1986) affirmed as modified 105 N.J. 587, 523 A.2d 655 (1987).

In-district placement of special education student was appropriate where placement conferred some educational benefit and constituted least restrictive environment. *K.H. v. Wayne Township Board of Education*, 96 N.J.A.R.2d (EDS) 226.

Residential placement was ordered for classified student who had regressed in day placement. *J.M. v. Pemberton Borough Board of Education*, 96 N.J.A.R.2d (EDS) 163.

Residential placement was necessary to meet needs of trainable mentally retarded student. *R.H. v. Ocean Township Board of Education*, 96 N.J.A.R.2d (EDS) 133.

Request for residential placement properly denied when disabled student's placement at day school conferred educational benefits in least restrictive environment. *P.G. v. Linwood Board of Education*, 96 N.J.A.R.2d (EDS) 99.

Requirement of score over 50 on standardized test for admission into eighth grade Spanish class was reasonable and not discriminatory. *M.R. v. South Brunswick Board of Education*, 96 N.J.A.R.2d (EDS) 31.

Mentally retarded child transferred from private out-of-state placement when appropriate alternate placement found in-state. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (DDD) 1.

Out-of-state placement found most appropriate for mentally retarded child until specialized day school and community residential placements can be arranged. *A.J. v. Newark Board of Education*, 96 N.J.A.R.2d (EDS) 1.

Mainstreaming was more appropriate for educationally disabled child given nature and severity of her condition, needs and abilities, and school's response to those needs. *Union City Board v. D.M.*, 95 N.J.A.R.2d (EDS) 213.

Classification as emotionally disturbed and placement in self-contained setting were necessary. *Kittatinny Regional v. R.W.*, 95 N.J.A.R.2d (EDS) 181.

Placement of neurologically impaired child in district mainstream setting was more appropriate than unnecessarily restrictive placement out of district. *N.J. v. Carteret Board*, 95 N.J.A.R.2d (EDS) 137.

Student with academic and behavioral difficulties required placement in self-contained emotionally disturbed classroom. Jersey City Board v. M.R., 95 N.J.A.R.2d (EDS) 114.

Epileptic student was not exempt from policy that teacher has discretion to determine whether episode of seizure warrants medical attention and was not exempt from policy that all medications taken by student during school day be administered by school nurse. S.G. v. West Orange Board of Education, 95 N.J.A.R.2d (EDS) 1.

Student with attention deficit hyperactivity disorder mainstreamed; second grade. R.S. v. Mountain Lakes' Board of Education, 94 N.J.A.R.2d (EDS) 201.

Student entitled to attend out-of-district school. D.H. v. Scotch Plains-Fanwood Board of Education, 94 N.J.A.R.2d (EDS) 175.

Abusive student with neurological impairment; home instruction. East Brunswick Board of Education v. I.C., 94 N.J.A.R.2d (EDS) 151.

School district's placement of child classified as pre-school handicapped was inappropriate; least restrictive environment. J.J.T. v. South Brunswick Board of Education, 94 N.J.A.R.2d (EDS) 123.

Entitlement to an education in district; least restrictive environment. K.D. v. Commercial Township Board of Education, 94 N.J.A.R.2d (EDS) 82.

Violation of least restrictive environment requirement occurred with placement of disabled child in an out-of-district segregated handicapped educational setting. M.T. v. Ocean City Board of Education, 93 N.J.A.R.2d (EDS) 275.

Transfer to middle school to provide handicapped child with appropriate education in less restrictive environment was justified. P.G. and E.G. v. Upper Pittsgrove, 93 N.J.A.R.2d (EDS) 189.

Inappropriate behaviors, indicating regression in present school environment, justified out-of-area residential placement. T.M. v. Pleasantville, 93 N.J.A.R.2d (EDS) 172.

Record established that current day placement was least restrictive and appropriate education for emotionally disturbed 11-year-old boy. R.R. v. Mt. Olive Board of Education, 92 N.J.A.R.2d (EDS) 205.

Placement of attention deficit disorder student in regional school district program was most appropriate and least restrictive placement. T.P. v. Delaware Valley Board of Education, 92 N.J.A.R.2d (EDS) 175.

Day placement, not residential placement, was appropriate for multiply handicapped student. J.B. v. Township of Montville Board of Education, 92 N.J.A.R.2d (EDS) 65.

Record established that placement in program offered by school district was appropriate; no placement in out-of-state school. H.S. v. Bloomfield Board of Education, 92 N.J.A.R.2d (EDS) 39.

6A:14-4.3 Program options

(a) A full continuum of alternative placements shall be available to meet the needs of students with disabilities ages three through 21 for special education and related services. Educational program options include placement in the following:

1. Regular class with supplementary aids and services including, but not limited to, the following:
 - i. Curricular or instructional modifications or specialized instructional strategies;
 - ii. Supplementary instruction;
 - iii. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
 - iv. Teacher aides; and

v. Related services.

2. Resource programs;

3. A special class program in the student's local school district;

4. A special education program in another local school district;

5. A special education program in a vocational and technical school;

6. A special education program in the following settings:

i. A county special services school district;

ii. An educational services commission; and

iii. A jointure commission.

7. A New Jersey approved private school for the disabled or an out-of-State school for the disabled in the continental United States approved by the department of education in the state where the school is located;

8. A program operated by a department of New Jersey State government;

9. Community rehabilitation programs;

10. Programs in hospitals, convalescent centers or other medical institutions;

11. Individual instruction at home or in other appropriate facilities, with the prior written approval of the Department of Education through its county office;

12. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;

13. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and

14. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been enrolled for the balance of the school year in which the child turns age three.

(b) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.

(c) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a board of education according to the following:

1. Such early childhood program shall be licensed or approved by a governmental agency;
2. The district board of education shall assure that the program is nonsectarian;
3. The district board of education shall assure the student's IEP can be implemented in the early childhood program with any supplementary aids and services that are specified in the student's IEP; and
4. The special education and related services specified in the student's IEP shall be provided by appropriately certified and/or licensed personnel or by paraprofessionals according to N.J.A.C. 6A:14-3.9(a)4 or 4.1(e).

Case Notes

Former N.J.A.C. 6:28-4.3 upheld. D.S. v. Bd. of Ed., East Brunswick Twp., 188 N.J.Super. 592, 458 A.2d 129 (App.Div.1983), certification denied 94 N.J. 529, 468 A.2d 184 (1983).

Jurisdiction of Juvenile and Domestic Relations Court to place a pupil in an appropriate educational program. State in Interest of F.M., 167 N.J.Super. 185, 400 A.2d 576 (J.D.R.Ct.1979).

Autistic preschooler was not ready to be mainstreamed for nonacademic courses. C.L. v. State Operated School District, 96 N.J.A.R.2d (EDS) 331.

Special education student was entitled to remain at out-of-state extended year program he had attended previous year, even though program lacked state approval. G.B. v. South Brunswick Board of Education, 96 N.J.A.R.2d (EDS) 284.

Emergency relief request for summer school for disabled preschooler was denied on grounds that it merely represented extension of ten-month school year. N.R. v. Kingwood Township Board of Education, 96 N.J.A.R.2d (EDS) 270.

Emergency relief request for summer in-home tutor was denied absent evidence of probable regression or lack of appropriate education. C.N. v. Kingwood Township Board of Education, 96 N.J.A.R.2d (EDS) 259.

Request for summer instruction was granted for classified student whose test scores showed regression. S.M. v. Ocean Gate Board of Education, 96 N.J.A.R.2d (EDS) 207.

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

Behavioral difficulties of disabled student precluded mainstreaming in regular school setting. J.T. v. Collingswood Board, 95 N.J.A.R.2d (EDS) 129.

Residential costs of impaired student in private placement pursuant to civil commitment were not responsibility of school board. M.M. v. Kinnelon Board, 95 N.J.A.R.2d (EDS) 120.

Student with attention deficit disorder was more appropriately placed in private school. R.S., A Minor v. West Orange Board, 95 N.J.A.R.2d (EDS) 59.

Structured, self-contained environment was more appropriate for student with psychiatric problems and truancy. M.M. v. Dumont Board, 95 N.J.A.R.2d (EDS) 50.

Trainable mentally retarded student was more appropriately placed in vocational as opposed to regular school. B.M. v. Vineland Board, 95 N.J.A.R.2d (EDS) 43.

Residential placement of handicapped student not necessary. J.M. v. Morris Board of Education, 95 N.J.A.R.2d (EDS) 10.

Current placement in public school system, rather than residential placement, was more appropriate for multiply handicapped child. J.M. v. Board of Education, 95 N.J.A.R.2d (EDS) 10.

Seeking to send their students to a district outside the state was not arbitrary, capricious or unreasonable. Campbell v. Montague Township Board of Education, 94 N.J.A.R.2d (EDU) 443.

Autistic child was ordered to continue in his in-home educational program. M.A. v. Voorhees Board of Education, 94 N.J.A.R.2d (EDS) 133.

Placement of Down's Syndrome child in private school was inappropriate. C.S. v. Middletown Board of Education, 94 N.J.A.R.2d (EDS) 97.

Disabled child was not entitled to reimbursement for private school placement. M.K. v. Caldwell-West Caldwell Board of Education, 94 N.J.A.R.2d (EDS) 55.

Educational needs of 4-year-old autistic child were met by placement in preschool handicapped program. K.M. v. Franklin Lakes, 93 N.J.A.R.2d (EDS) 213.

Placement in 24-hour residential program was required for 19-year-old multiply handicapped student. J.S. v. High Point, 93 N.J.A.R.2d (EDS) 192.

Transfer to middle school to provide handicapped child with appropriate education in less restrictive environment was justified. P.G. and E.G. v. Upper Pittsgrove, 93 N.J.A.R.2d (EDS) 189.

Personalized educational program and support services were sufficient to allow handicapped student to make significant educational progress. J.J.K. v. Union County Board, 93 N.J.A.R.2d (EDS) 161.

Significant regression required extension of school year for multiply handicapped student. J.C. v. Wharton, 93 N.J.A.R.2d (EDS) 152.

Student's explosive and violent behavior required placement in structured educational environment. Ocean City v. J.W. 93 N.J.A.R.2d (EDS) 147.

Appropriate education was provided in mainstreamed school, thus precluding placement of deaf student in segregated school. S.M. v. Bergenfield, 93 N.J.A.R.2d (EDS) 115.

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.

Board of education could have provided appropriate placement for 12-year-old student; no reimbursement for parents' unilaterally enrolling student in private school. J.S. v. Blairstown Board of Education, 93 N.J.A.R.2d (EDS) 81.

In-district placement of 15-year-old neurologically impaired student was appropriate; no reimbursement for unilateral placement out-of-district. T.G. v. Middletown Township Board of Education, 93 N.J.A.R.2d (EDS) 66.

Appropriate placement for neurologically impaired seven-year-old student was at in-district school even if not placement preferred by parents. A.E. v. Caldwell-West Caldwell Board of Education, 93 N.J.A.R.2d (EDS) 62.

County region school district failed to establish that self-contained Trainable Mentally Retarded program at in-district school was appropriate educational program for Downs Syndrome student. A.R. v. Union County Regional High School District, 93 N.J.A.R.2d (EDS) 48.

Appropriate placement for three-year-old child having developmental disorder was in local school district program. W.B. v. Metuchen Board of Education, 93 N.J.A.R.2d (EDS) 35.

Placement in out-of-district facility offering behavioral modification, rather than readmission to public school, was appropriate for suspended high school student. V.D. v. North Hunterdon Board of Education, 93 N.J.A.R.2d (EDS) 21.

Day placement was appropriate for 19-year-old multiply handicapped student with obsessive compulsive disorder. T.W. v. Monroe Township Board of Education, 93 N.J.A.R.2d (EDS) 14.

Neurologically impaired self-contained class, with appropriate mainstreaming, at public high school was appropriate and least restrictive placement for student. J.F. v. Riverdale Regional High School, 93 N.J.A.R.2d (EDS) 7.

Residential placement of 16-year-old multiply handicapped student at group-home facility not educationally necessary. M.L. v. Summit Board of Education, 92 N.J.A.R.2d (EDS) 239.

Appropriate placement for 12-year-old multiply handicapped student was Township public school system; appropriate individualized educational program could be developed. T.H. v. Wall Township Board of Education, 92 N.J.A.R.2d (EDS) 227.

No private school reimbursement; board of education offered free and appropriate education for communication handicapped student. V.G. v. Jefferson Township Board of Education, 92 N.J.A.R.2d (EDS) 212.

Record established that current day placement was least restrictive and appropriate education for emotionally disturbed 11-year-old boy. R.R. v. Mt. Olive Board of Education, 92 N.J.A.R.2d (EDS) 205.

Record established that multiply handicapped student's educational needs could not be met by perceptually impaired class offered by board of education. Alloway Township Board of Education v. M.P., 92 N.J.A.R.2d (EDS) 202.

Placement of attention deficit disorder student in regional school district program was most appropriate and least restrictive placement. T.P. v. Delaware Valley Board of Education, 92 N.J.A.R.2d (EDS) 175.

Record supported classification of child as neurologically-impaired; placement in one $\frac{1}{2}$ day kindergarten class and one $\frac{1}{2}$ day neurologically-impaired class. D.M. v. Union City Board of Education, 92 N.J.A.R.2d (EDS) 143.

Appropriate placement of 6-year-old, neurologically impaired student was in self-contained neurologically impaired special education class at in-district school. A.F. v. Roselle Board of Education, 92 N.J.A.R.2d (EDS) 118.

Mainstreaming sixth grade student for remainder of school year not shown to be appropriate. D.E. v. Woodcliff Lake Board of Education, 92 N.J.A.R.2d (EDS) 116.

Out-of-state residential school appropriate placement for 16-year-old boy who was auditorily and emotionally impaired. J.P. v. Metuchen Board of Education, 92 N.J.A.R.2d (EDS) 110.

Placement of child was inappropriate to meet his educational needs; parents entitled to private school tuition reimbursement. J.S. v. Livingston Board of Education, 92 N.J.A.R.2d (EDS) 94.

Individualized Education Plan recommending that perceptually impaired student be educated at public middle school was appropriate. Passaic Board of Education v. E.G., 92 N.J.A.R.2d (EDS) 86.

Morning preschool handicapped class placement sufficient. M.G. v. East Brunswick Board of Education, 92 N.J.A.R.2d (EDS) 84.

Day placement, not residential placement, was appropriate for multiply handicapped student. J.B. v. Township of Montville Board of Education, 92 N.J.A.R.2d (EDS) 65.

Placement of hearing-impaired child; local elementary school appropriate. A.M. v. Madison Board of Education, 92 N.J.A.R.2d (EDS) 51.

Record established that placement in program offered by school district was appropriate; no placement in out-of-state school. H.S. v. Bloomfield Board of Education, 92 N.J.A.R.2d (EDS) 39.

Unilateral decision to place the child in a private school; no tuition reimbursement. C.R. v. Delaware Valley Regional School District, 92 N.J.A.R.2d (EDS) 31.

Private school, and not proposed public school placements, provided appropriate education in least restrictive environment for severely mentally retarded student classified as educable mentally retarded. Jo.M. and S.M. on Behalf of Their Daughter, J.M. v. Monmouth Regional Board of Education, 92 N.J.A.R.2d (EDS) 9.

Although petitioners sought private school placement for their seven year old, classified as emotionally disturbed, the OAL judge determined that a self-contained, age appropriate, emotionally disturbed placement in respondent's school system was the appropriate placement for the child. B.P. and E.P. Parents of J.P. v. City of Newark Bd. of Educ., 9 N.J.A.R. 190 (1986).

Petitioners' action to require local school board to pay residential costs and tuition retroactively, for out-of-state placement in a private residential school for their 13 year old son, classified as neurologically impaired, denied; finding that local board had attempted to provide a free appropriate education, with personalized instruction and sufficient support services to allow the child to benefit educationally. M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ., 9 N.J.A.R. 179 (1985).

Residential program for multiply handicapped pupil determined to be least restrictive appropriate placement under former N.J.A.C. 6:28-2.2. A.N. v. Clark Bd. of Ed., 5 N.J.A.R. 152 (1983).

Parents not entitled to reimbursement for private school tuition following unilateral withdrawal of pupil from special education program. Robinson v. Goodwin, 1975 S.L.D. 6.

6A:14-4.4 Program criteria: speech-language services

(a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:

1. Speech-language services shall be given individually or in groups.

i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.

2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

6A:14-4.5 Program criteria: supplementary instruction

(a) Supplementary instruction shall be provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.

(b) A teacher providing supplementary instruction shall be appropriately certified either for the subject or level in which instruction is given or as a teacher of the handicapped according to the requirements of N.J.A.C. 6:11.

(c) Supplementary instruction shall be provided individually or in groups according to the numbers for support resource programs.