

vices personnel as appropriate," no authority exists for reimbursement of such providers. C.F. ex rel. J.F. v. Franklin Twp. Bd. of Educ., OAL Dkt. No. EDS 8034-08, 2008 N.J. AGEN LEXIS 876, Final Decision (October 29, 2008).

IEP was inadequate where, among other things, the case manager admitted that she received absolutely no input from staff who had worked with the student during the school year nor did she attempt to retrieve that information, contrary to N.J.A.C. 6A:14-2.3(k)'s requirement that a teacher with knowledge of the student participate in the eligibility meeting and development of the student's IEP. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL Dkt. No. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

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

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL Dkt. No. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), *aff'd*, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P., OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

Relief sought by the District, including having 17-year-old student evaluated in the areas of psychological, learning, and social/psychiatric was warranted notwithstanding his mother's refusal to consent to same. The District offered sufficient proof that student had a distressing mental condition, where student admitted hearing voices, had demonstrated violent propensities when he punched and broke his brother's jaw, student sought help from the guidance office and the school psychologist, and his behavior was confirmed in correspondence received from a counseling organization and in conversations with his mother. Ocean City Bd. of Educ. v. J.J. ex rel. J.C., OAL Dkt. No. EDS 8711-05, 2005 N.J. AGEN LEXIS 931, Final Decision (December 19, 2005).

School district committed numerous procedural errors where dual busing for a visually impaired student was abruptly halted; the only notice the parents received that dual busing was no longer going to be provided was from the transportation department, and there was no notification after an IEP meeting as to why this accommodation was not specified as a related service in the IEP. C.R. ex rel. C.R. v. Bridgewater-Raritan Reg'l Bd. of Educ., OAL Dkt. No. EDS 10150-04, 2005 N.J. AGEN LEXIS 530, Final Decision (August 30, 2005).

Graduation was "change of placement," within the meaning of procedural protection of parents' right to be consulted about their disabled children's education. T.H. v. Princeton Regional Board Of Education, 2003 N.J. AGEN LEXIS 1643, (N.J. Adm.), NO. EDS 4087-03.

School board's learning disability teacher-consultant and speech and language teacher, who were academically trained in the field of education, with an emphasis in special education, and who were certificated as teachers, could attend eligibility meeting for students classified for special education and related services, absent evidence that teachers were lacking in knowledge of general education program offered in board's schools. A.D. and E.P., on Behalf of E.D.P., v. Montclair Board of Education, 2000 N.J. AGEN LEXIS 700, N.J. Adm., Nov 08, 2000, (NO. EDS 3612-00).

Attendance of mother's representative at individualized education program (IEP) meetings involving student, his mother, and school's child study team was not appropriate, where representative had compromised her effectiveness as an advocate on behalf of student by filing her lawsuit against child study team and its members individually. J.J.Y., v. Kenilworth Board of Education, 2000 , 2000 N.J. AGEN LEXIS 1328, N.J. Adm., Aug 11, 2000, (NO. EDS 5599-00).

Special education program approved for classified student despite lack of parental approval after mother failed to attend either of two scheduled conferences. Seaside Park Board of Education v. C.G., 96 N.J.A.R.2d (EDS) 257.

Handicapped child's pre-school educational program was appropriate since it conferred meaningful educational benefit for child. A.E. v. Springfield Board of Education, 96 N.J.A.R.2d (EDS) 128.

Mother of third-grader who exhibited serious behavioral and educational problems was properly ordered to produce child for evaluations by child study team. Linden Board of Education v. T.T., 96 N.J.A.R.2d (EDS)105.

Parents' refusal to cooperate compels administrative order to place special education student in out-of-district facility recommended under individualized education plan. Lawrence Township Board of Education v. C.D., 96 N.J.A.R.2d (EDS) 98.

Objection to emotionally disturbed classification and out-of-district placement of student with discipline problems dismissed after both classification and placement found to be justified. L.M. v. Vinland Board of Education, 96 N.J.A.R.2d (EDS) 93.

Student classified as neurologically impaired was properly ordered placed in self-contained class despite lack of parental consent to such placement. Jersey City Board of Education v. J.H., 96 N.J.A.R.2d (EDS) 92.

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.

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.

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.

Mother of disabled student required to participate in interview with school district. *Jersey City State-Operated School District v. M.B.*, 95 N.J.A.R.2d (EDS) 8.

Board of Education entitled to administer initial evaluation for special education services of student, no parental consent. *Jersey City Board of Education v. T.W.*, 95 N.J.A.R.2d (EDS) 6.

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

Lack of proper notice to parents of board's placement decision under former N.J.A.C. 6:28-1.9; review meeting under former N.J.A.C. 6:28-1.8. *A.N. v. Clark Bd. of Ed.*, 5 N.J.A.R. 152 (1983).

#### 6A:14-2.4 Native language

(a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly not feasible to do so.

1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent.

(b) If the native language is not a written language, the district board of education shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

2. That the parent understands the content of the notice; and

3. There is written documentation that the requirements of (b)1 and 2 above have been met.

#### Case Notes

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-2.5 Protection in evaluation procedures

(a) In conducting an evaluation, each district board of education shall:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:

i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and

ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;

2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and

3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each district board of education shall ensure:

1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:

i. Are selected and administered so as not to be racially or culturally discriminatory; and

ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and

iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:

i. Have been validated for the purpose(s) for which they are administered; and

ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;

3. The student is assessed in all areas of suspected disability;

4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;

5. Tests are selected, administered and interpreted so that when a student has sensory, manual or communication impairments, the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;

6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two

Educ. v. M.D. ex rel. A.D., OAL Dkt. No. EDS 07551-08, 2008 N.J. AGEN LEXIS 631, Final Decision (July 14, 2008).

Due process petition dismissed for parent's failure to participate in resolution session (20 U.S.C.A. 1415(f)(1)(B); N.J.A.C. 6A:14-2.7(h)); on the advice of his attorney, parent attended the session without the attorney and did not answer questions or discuss the issues. J.N. ex rel. M.N. v. Lenape Reg'l High School Dist. Bd. of Educ., OAL Dkt. No. EDS 4110-08, 2008 N.J. AGEN LEXIS 406, Final Decision (June 26, 2008).

Emergency relief granted, amending IEP to supplement a student's Extended School Year (ESY) program by the district providing transportation to Camp Shriver, a no-charge Special Olympics program; student would suffer irreparable harm if she did not attend the program because she would regress in the area of social skills. Parent's request to incorporate social skills training in the district's four-hour ESY program, however, was denied. S.P. ex rel. M.P. v. East Brunswick Twp. Bd. of Educ., OAL Dkt. No. EDS 4718-08, 2008 N.J. AGEN LEXIS 374 (June 24, 2008).

Emergency relief granted to allow student to participate in June 2008 high school graduation exercises, where the school board violated the student's IEP by advising him to make up his failed junior year English course at a community college without providing any supports and the student failed the community college course. Student's IEP had to be amended to provide an opportunity to make up the course, and thus Alicia's Law, N.J.S.A. 18A:7C-5.2, was applicable. School board's request to call out the student's name separately at the graduation ceremonies was denied. K.R. and L.R. ex rel. B.R. v. Lawrence Twp. Bd. of Educ., OAL Dkt. No. EDS 4688-08, 2008 N.J. AGEN LEXIS, Final Decision (June 17, 2008).

Emergent relief was denied to allow a 20-year-old high school student, suffering from cerebral palsy, who had completed the requirements for graduation from high school, to continue for a third twelfth grade year in high school, where parents alleged that student was not emotionally and/or academically ready for life beyond high school. There were genuine issues of material fact and in the law and it could not be said that, after the case was fully heard, it was probable that the parents would prevail on the merits of their claim. J.K. ex rel. G.K. v. Moorestown Twp. Bd. of Educ., OAL Dkt. No. EDS 4388-08, 2008 N.J. AGEN LEXIS 896, Emergent Relief Decision (May 30, 2008).

"Stay put" section of the Individuals with Disabilities Education Act, 20 U.S.C.A. 1415(j), is unequivocal in that it states plainly that the child shall remain in the then current educational placement until the completion of the due process proceeding, and it overrides the emergent relief factors in N.J.A.C. 6A:14-2.7. The federal statute "functions, in essence, as an automatic preliminary injunction," substituting "an absolute rule in favor of the status quo for a tribunal's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of the hardships." D.C. ex rel. J.C. v. Glen Rock Bd. of Educ., OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Even if N.J.A.C. 6A:14-2.7 applied, parents' petition for emergent relief seeking a temporary residential placement for their 16-year-old son at an out-of-district school would be denied where it did not appear that the legal right underlying the parents' claim was settled or that the parents had a substantial likelihood of success; cases cited by the district brought into question a district's responsibility to provide a residential placement where the need for that level of structure is attributable, not to the attainment of meaningful educational benefit, but rather to a mental health problem and where the parents are having difficulty in supervising the child at home. D.C. ex rel. J.C. v. Glen Rock Bd. of Educ., OAL Dkt. No. EDS 05536-08, 2008 N.J. AGEN LEXIS 897, Emergent Relief Decision (May 8, 2008).

Once a child is enrolled in a charter school, the charter school becomes responsible for the educational program the child is to receive. When the charter school child study team, in cooperation with the parents, determines that a child shall attend an out-of-district private

special education facility in order to receive the program determined to be appropriate to his needs, the resident board of education is not entitled to a due process hearing to challenge that placement. The resident board of education's challenge under N.J.S.A. 18A:36A-11 is to be made by filing an appeal before the Commissioner of Education under N.J.S.A. 18A:6-9. Garfield Bd. of Educ. v. T.C. ex rel. J.C., OAL Dkt. No. EDS 3508-08, 2008 N.J. AGEN LEXIS 894, Final Decision (May 7, 2008).

Due process complaint dismissed, without prejudice, for failure of the parent to participate in the mandatory resolution session. T.H. ex rel. S.H. v. Summit City Bd. of Educ., OAL Dkt. No. EDS 03941-08, 2008 N.J. AGEN LEXIS 348, Final Decision (April 9, 2008).

Mother's request for emergent relief was denied for a stay-put order to prevent implementation of IEP by the N.J. Department of Children and Families for 21-year-old Pennsylvania resident with autism and schizo effective disorder, who was involuntarily committed while visiting her father in New Jersey. Previous placements were not viable, and the law does not support the imposition of a stay-put in interstate student transfer situations. P.C. ex rel. G.C. v. N.J. Dep't of Children & Families, OAL Dkt. No. EDS 3579-08, 2008 N.J. AGEN LEXIS 203, Emergent Relief Decision (March 26, 2008).

Claims dismissed because parent refused and/or failed to participate in resolution meeting, thereby frustrating and obstructing the process. J.T. and L.T. ex rel. G.T. v. Washington Twp. Bd. of Educ., OAL Dkt. No. EDS 903-08, 2008 N.J. AGEN LEXIS 229, Final Decision (March 26, 2008).

Emergency home instruction for not more than 45 calendar days was ordered where a student with an IEP assaulted his teacher and had previously assaulted her and other children, requiring that he be physically restrained on four separate occasions, and his parents and the school district could not agree on placement. Ridgewood Village Bd. of Educ. v. J.R. and K.R. ex rel. J.R., OAL Dkt. No. EDS 1627-08, 2008 N.J. AGEN LEXIS 65, Emergent Relief Decision (February 7, 2008).

Emergency relief was denied where parents failed to demonstrate that school officials acted in an arbitrary, capricious, unreasonable, or unlawful manner by not granting credit to high school student in four major subjects because she did not attend classes regularly and otherwise missed significant instructional time; nor was it shown that school officials acted unreasonably in offering the student the opportunity to earn academic credit by taking subject matter examinations. M.N. and B.N. ex rel. M.N. v. Hanover Park Reg'l High Bd. of Educ., OAL Dkt. No. EDS 11436-07, 2007 N.J. AGEN LEXIS 803, Final Decision (December 13, 2007).

Clerical error that referred to the student as a sixth grader was insufficient reason to consider placement in the sixth grade, when the student had yet to successfully complete the fifth grade. Z.I. ex rel. R.I. v. Irvington Twp. Bd. of Educ., OAL Dkt. No. EDS 11605-07, 2007 N.J. AGEN LEXIS 804, Final Decision (December 11, 2007).

Parent's request for emergency relief for temporary placement of child at a different school than the one she had been attending, pending the disposition of her due process petition, was denied; the "stay-put" provision of the IDEA (20 U.S.C.A. 1415) required that the child remain in her current placement at the early childhood learning school until all issues of the due process petition were resolved. The stay-put provision of the IDEA is an absolute rule in favor of the status quo, overriding discretionary consideration of the emergent relief factors in N.J.A.C. 6A:14-2.7(s), such as irreparable harm and likelihood of success on the merits. E.S. ex rel. J.S. v. Union Twp. Bd. of Educ., OAL Dkt. No. EDS 11355-07, 2007 N.J. AGEN LEXIS 744, Emergent Relief Decision (November 1, 2007).

Emergency relief granted by way of "stay put" to parents allowing child to continue education at the second-grade level pursuant to child's IEP from previous school. Parents had not agreed to terms in proposed IEP submitted for new school year, parents timely filed for due process, and, therefore, they were entitled to child's placement at same school and in surroundings proven suitable for his visual impairments. M.H. ex

rel. B.H. v. Mantua Twp. Bd. of Educ., OAL Dkt. No. EDS 8335-07, 2007 N.J. AGEN LEXIS 715, Emergent Relief Decision (October 30, 2007).

Emergency relief was denied parents of ninth-grade student (with above-average intelligence) seeking his education at home until a hearing could be held to determine whether he should be classified and whether an IEP should be provided for him. Although student's doctors testified that he suffered from medical problems, including psychiatric depression and/or depressive disorder, parents had not shown that, when the case was fully heard, they would probably succeed in their claim that student should be classified for Special Education and related services and that he should be educated at home; similarly, the board of education had not shown that it would probably succeed on its claims. H.S. ex rel. A.S. v. Moorestown Twp. Bd. of Educ., OAL Dkt. No. EDS 8402-07, 2007 N.J. AGEN LEXIS 681, Emergent Relief Decision (October 17, 2007).

Parents' request for immediate transmission of case (involving nine-year-old with disabilities, including mental retardation) to OAL for hearing was denied given the policy of encouraging settlement and given the Board of Education's contention that settlement remained viable and that the case should be subject to a resolution session first. S.W. ex rel. D.W. v. East Windsor Reg'l Bd. of Educ., OAL Dkt. No. EDS 8431-07, 2007 N.J. AGEN LEXIS 682, Final Decision (October 17, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied where request did not involve one of the issues enumerated in 6A:14-2.7(r). There was nothing in the record to reflect that a one-on-one aide had been previously provided and was no longer provided; on the contrary, the record was clear that the child was in a self-contained classroom in which there were a teacher and two aides during the past year. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Applicant must meet all four prongs of the test set out in N.J.A.C. 6A:14-2.7 in order to prevail on an application for emergent relief. The first prong of the test is mandatory, i.e., the use of the word "will" indicates that there must be a high degree of certainty, not just a possibility, that irreparable harm will occur. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Application for emergent relief, seeking a trained aide during the 2007-08 school year both in the classroom and during transportation, was denied because although child's doctor did indicate that an aide was appropriate, he failed to specify that a one-on-one aide was required nor was it clear that he was presented with a description of the accommodations which the district had indicated it would be making. R.M. and L.M. ex rel. N.M. v. Franklin Lakes Bd. of Educ., OAL Dkt. No. EDS 9126-07, 2007 N.J. AGEN LEXIS 623, Emergent Relief Decision (August 29, 2007).

Parents' petition for a due process hearing regarding their disabled child was dismissed where the parents failed to attend a resolution meeting and cancelled the mediation that was scheduled between the parties. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

N.J.A.C. 6A:14-2.7(h) is consistent with New Jersey's public policy strongly favoring settlement of claims; settlements permit parties to resolve disputes on mutually acceptable terms rather than exposing themselves to the uncertainties of litigation. J.T. and L.T. ex rel. M.T. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2377-07, 2007 N.J. AGEN LEXIS 253, Final Decision (May 16, 2007).

Parent's claim against a board of education seeking legal and learning consultant fees was dismissed because administrative law judges do not have authority to grant claims for attorney fees or expert fees in special education cases. W.Z. ex rel. G.Z. v. Princeton Reg'l Bd. of Educ., OAL

DKT. NO. EDS 2563-07, 2007 N.J. AGEN LEXIS 227, Final Decision (April 26, 2007).

Parents' petition for due process dismissed for failure to participate in resolution meeting. R.W. and A.W. ex rel. A.W. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 2378-07, 2007 N.J. AGEN LEXIS 226, Final Decision (April 24, 2007).

Stay-put relief granted to continue student's one-on-one aide during at least 61% of his school day until the completion of due process in the matter. Under IDEA's stay-put provision, the intent is to maintain some stability and continuity in placement while actual placement is being determined. D.W. ex rel. S.W. v. Commercial Twp. Bd. of Educ., OAL DKT. NO. EDS 276-07, 2007 N.J. AGEN LEXIS 35, Final Decision (January 25, 2007).

Emergency relief granted to school district to allow it to commence and conduct the necessary assessments of child classified as disabled (classification category of "specific learning disability") in order to perform psychological, educational, and social evaluations; school district's request to enjoin or otherwise prevent the parents from engaging in private evaluations at their own expense was denied. Matawan-Aberdeen Reg'l Bd. of Educ. v. H.G. ex rel. S.G., OAL Dkt. No. EDS 8330-05, 2005 N.J. AGEN LEXIS 658, Final Decision (November 2, 2005).

Parents were not entitled to an emergency "stay put" order to keep their child in an out-of-district high school, as school districts are not required to continue to provide services to a student from another district where no contractual relationship between the two districts ever existed that could be construed to require the foreign district to provide FAPE. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Emergency relief for special education student denied. C.Y. v. Deerfield Township Board of Education, 97 N.J.A.R.2d (EDS) 59.

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.

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., 96 N.J.A.R.2d (EDS) 357.

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 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 and the student's parent(s).

1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.

2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

(b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.

(c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:

1. The removal is for more than 10 consecutive school days; or

2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.

i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.

(d) 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 A.) However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

(e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

1. When it is determined that a series of short-term removals is not a change of placement, school officials, in consultation with the student's special education teacher and case manager shall determine the extent to which services are necessary to enable the student to progress



appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

2. When a removal constitutes a change of placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

(f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury under 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR §§300.1 et seq., or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR §§300.1 et seq., the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. §1415(k) and its implementing regulations, at 34 CFR §§300.1 et seq., incorporated herein by reference. However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

Rewrote the section.

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Rewrote (a); recodified (b) through (e) as (c) through (f); added new (b); and rewrote present (d) and (f).

#### Case Notes

State regulatory requirement that special education students removed from placement for disciplinary reasons for more than 10 cumulative or consecutive school days in a school year be provided services enabling them to "progress appropriately" in curriculum and "advance appropriately" toward individual goals did not violate students' right under the Individuals with Disabilities Education Act (IDEA) to free appropriate public education (FAPE); language at issue mirrored federal regulations, and appropriate progress and advancement amounted to "meaningful benefit" involving "significant learning," precisely the objective of a FAPE. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations concerning discipline, suspension, or expulsion of special education students, incorporating comprehensive provisions of the Individuals with Disabilities Education Act (IDEA) and federal special education regulations, satisfied IDEA's requirement that state adopt rules governing special education discipline, where provisions thus incorporated were accessible and understandable without adopting separate state rules for their implementation. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations concerning discipline, suspension, or expulsion of special education students, incorporating comprehensive provisions of the Individuals with Disabilities Education Act (IDEA) and federal special education regulations, were not rendered arbitrary or capricious by reason of their failure to define certain terms used in IDEA. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations excluding parents from determination of level of education services required to provide free appropriate public education (FAPE) for students suspended for more than ten days in a school year in suspensions not constituting change in placement did

not infringe upon parents' rights under the Individuals with Disabilities Education Act (IDEA), where challenged state regulation mirrored federal regulations governing same subject matter. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State's failure to adopt special education regulation requiring consultation with student's parents in determining point at which series of disciplinary removals of fewer than ten days constitutes change in placement did not infringe upon parents' right under the Individuals with Disabilities Education Act (IDEA) to be involved in all disciplinary determinations; nothing in IDEA or its federal regulations specified particular persons entitled to determine whether series of short-term removals constitute change in placement, and such determination was therefore implicitly left to discretion and determination of the states. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

Discipline imposed failed to comply with the requirements of the IDEA and New Jersey implementing regulations when a disabled 16-year-old student brought a pocket knife to school with a blade of less than 2.5 inches; the student was removed from school for a period equal to 81 calendar days, which exceeded the IDEA's provisions. *K.R. and J.R. ex rel. N.R. v. Vineland City Bd. of Educ.*, OAL DKT. NO. EDS 2321-07, 2008 N.J. AGEN LEXIS 22, Final Decision (January 22, 2008).

School district's request to remove high school student classified as "emotionally disturbed" to an interim alternative educational setting was granted based on the student's involvement in numerous incidents of violence and the district's assessment that there was a clear danger. *Lawrence Twp. Bd. of Ed. v. D.F. ex rel. D.F.*, OAL DKT. NO. EDS 12056-06, 2007 N.J. AGEN LEXIS 26, Final Decision (January 9, 2007).

Discipline for misconduct due to underlying disability found inappropriate. *R.G. v. West Orange Board of Education*, 97 N.J.A.R.2d (EDS) 122.

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

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

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

Request to return suspended kindergartner 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. 6A:32.

(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. 6A:32 without unnecessary delay and before any meeting regarding the IEP.

(c) Any consent required for students with disabilities under N.J.A.C. 6A:32 shall be obtained according to N.J.A.C. 6A:14-1.3 "consent" and 2.3(a) and (b).

Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

Amended N.J.A.C. references throughout.

#### Case Notes

Trial judge properly balanced alleged sexual abuse victims' right to privacy with defendant's right of confrontation by examining in camera confidential school records of victims sought by defendant in connection with issue of victims' competency to testify. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

Trial judge's denial of defendant's pretrial motion to examine confidential school records of alleged sexual abuse victims, in connection with the issue of victims' competency to testify, did not violate the right of confrontation. *State of New Jersey v. Krivacska*, 775 A.2d 6 (2001).

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, an early childhood program, or an approved private school for students with disabilities.

(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 school, an early childhood program, or approved private school for students with disabilities 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 and that the private placement is appropriate. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge according to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if it does not meet the standards that apply to the education provided by the district board of education.

(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(g) and (h) 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 shall not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if the conditions in (d)3 and 4 below are met, and, at the discretion of a court or an administrative law judge, may not be reduced if the conditions in (d)1 and 2 below are found to exist:

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.

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

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

In (a), inserted a reference to early childhood programs; and rewrote (b).

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

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

In (a) and (b), substituted "students with disabilities" for "the disabled"; in (b), inserted "for placements in unapproved schools" in the last sentence; in (c)3, updated the N.J.A.C. reference; in (d), rewrote the introductory paragraph.

### Case Notes

Neither New Jersey statute precluding local educational agency's (LEA's) placement of disabled student in sectarian school, nor its implementing regulations, apply to unilateral parental placements, for purpose of determining whether such placements are reimbursable if LEA is found to have failed to provide free and appropriate public education (FAPE) required under IDEA. Individuals with Disabilities Education Act, § 601 et seq., as amended, 20 U.S.C.A. § 1400 et seq. L.M., a minor child, by his parents, H.M. and E.M. v. Evesham Township Board of Education, 256 F.Supp.2d 290.

Parents' claim for tuition reimbursement for their unilateral placement of sixth grade student out-of-district was denied because the ALJ found that the district's proposed IEP appropriately addressed the student's significant weaknesses in social interaction and pragmatic language and continued the successful program used in fifth grade. E.S. and J.S. ex rel. H.S. v. West Windsor-Plainsboro Reg'l Bd. of Educ., OAL Dkt. No. EDS 8569-07, 2008 N.J. AGEN LEXIS 377, Final Decision (June 6, 2008).

Parents were entitled to reimbursement for their unilateral out-of-district placement of fifth-grade multiply disabled student at the Orchard Friends School because the program offered by the school district was not appropriate to meet the student's individual needs and confer meaningful educational benefit; for example, student needed small classes with a low student teacher ratio and teachers trained in multi-sensory teaching strategies, but the district's IEP proposed full-size mainstream classes for science, social studies, and all special classes, including physical education, and made no provision for social skills training. J.D. ex rel. C.D. v. Cherry Hill Twp. Bd. of Educ., OAL DKT. NO. EDS 8122-06, 2008 N.J. AGEN LEXIS 231, Final Decision (March 24, 2008).

Reimbursement for unilateral placement was denied where it was found that parents failed to notify the district of their dissatisfaction with the proposed or prior IEP for their multiply disabled daughter, and they further failed to give notice, within the time prescribed by N.J.A.C. 6A:14-2.10, of their intention to unilaterally place her in a private school with the expectation that the district reimburse them; the parents' failure to provide notice made it impossible for the district to address their concerns prior to removal. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Only reasonable interpretation of N.J.A.C. 6A:14-2.10(c)(2) is that it includes a requirement to notify the school district of an intent to seek reimbursement. D.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Parents' failure to sign the IEP (other than the initial IEP), without more proof, does not meet the requirement of N.J.A.C. 6A:14-2.10(c) that the parents inform the IEP team of their objection to the IEP. D.A. and A.A. ex rel. R.A. v. Haworth Bd. of Educ., OAL DKT. NO. EDS 12450-07, 2008 N.J. AGEN LEXIS 90, Final Decision (February 15, 2008).

Parents were entitled to reimbursement for unilateral placement of their daughter for three consecutive school years in an out-of-district school where the district school failed to develop an IEP for their daughter prior to her entering the fifth grade. P.R. and C.R. ex rel. K.R. v. Roxbury Twp. Bd. of Educ., OAL DKT. NO. EDS 09874-06, 2007 N.J. AGEN LEXIS 778, Final Decision (October 31, 2007).

Parents were entitled to reimbursement for unilateral placement of their preschool child, who had language difficulties, in a private preschool in conjunction with a home-based applied behavior analysis (ABA) program, where the school district's ABA program did not appropriately address the child's needs. G.V. and L.V. ex rel. J.V. v. Wyckoff Twp. Bd. of Educ., OAL DKT. NO. EDS 11295-06, 2007 N.J. AGEN LEXIS 687, Final Decision (October 26, 2007).

Parents are entitled to reimbursement for the cost of unilateral placement if it can be found that the program proposed by the district was inappropriate and the parental placement was appropriate and made in good faith M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL DKT. NO. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Parents of a nine-year-old autistic student failed to show that a school district did not provide a legitimate offer of FAPE to their son, and, thus, their claim for reimbursement for a home schooling program was denied; further, parents' actions in the context of the entire matter were found to be unreasonable. In addition, limiting the child's studies to a home environment was more constrictive than his prior placement and did not appear to coincide with the parents' desire to have him eventually mainstreamed. R.V. and D.V. ex rel. S.V. v. Randolph Twp. Bd. of Educ., OAL DKT. NO. EDS 1336-2006, 2006 N.J. AGEN LEXIS 742, Final Decision (September 13, 2006).

Reimbursement for unilateral placement of student with autistic spectrum disorder in an out-of-district high school was denied, where parents did not inform the district at the last IEP meeting in June 2003 that they were considering an out-of-district placement and their actions were in bad faith; parents had hired a tutor the year before to prepare the student for entrance examinations at the private school, a letter for admission was dated Dec. 2002, and they did not attempt to negotiate a better IEP with the district. R.P. and V.P. ex rel. E.P. v. Ramsey Bd. of Educ., OAL DKT. NO. EDS 11682-04, 2006 N.J. AGEN LEXIS 745, Final Decision (September 5, 2006), aff'd, 2008 U.S. Dist. LEXIS 70884 (D.N.J. Sept. 17, 2008) (unpublished opinion) (affirming result, but rejecting certain rulings of the ALJ).

Reimbursement for unilateral placement of 18-year-old student at a private residential school post-twelfth grade was denied; the district offered the student a program for that year that addressed both academic and transition needs, with a half day school-to-work component. While high school transition obligations are not well defined, the duty should be viewed in light of the general IDEA principle that districts need not maximize a student's potential but are in compliance when they offer meaningful educational benefit. C.K., G.K. and P.K. v. New Providence Bd. of Educ., OAL DKT. NO. EDS 11780-05, 2006 N.J. AGEN LEXIS 711, Final Decision (August 10, 2006).

Student was appropriately declassified and parents' application for tuition reimbursement for unilateral placement and for compensatory education for speech services was denied where burden was on parents to show that student could not achieve meaningful educational progress at the kindergarten in the district and that the private school with an aide was appropriate, but parties presented opposing appraisals of student's abilities. Although reports in evidence suggested student suffered from autism, the authors of the reports were not presented and the doctor who did testify could not identify specific behaviors that would qualify as severe or pervasive as required by N.J.A.C. 6A:14-3.5. W.H. ex rel. A.H. v. Bloomsbury Bd. of Educ., OAL Dkt. No. EDS 8666-05 and EDS 8667-05, 2006 N.J. AGEN LEXIS 488, Final Decision (August 2, 2006).

That preschool child with autism spectrum disorder had not "previously received special education and related services from the district of residence" within the meaning of N.J.A.C. 6A:14-2.10(b) did not bar parents from seeking reimbursement for the costs of private placement;



the New Jersey regulation cannot serve as a basis for providing any less relief than is available under *Burlington*, 471 U.S. 359 (1985), and a contrary interpretation would place parents of preschool children in the untenable position of acquiescing to an inappropriate placement in order to preserve their right to reimbursement. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGEN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

Parent of a child with a rare chromosomal defect who sought reimbursement for unilateral placement was entitled to one-half of the cost of tuition at an out-of-district school for two school years where, due to procedural IEP deficiencies, the in-district school failed to offer the child a FAPE; balancing the equities, the cost-sharing agreement in place for the child's kindergarten and first-grade years as a result of a settlement was extended to encompass the second- and third-grade years in dispute. F.D. ex rel. F.D. v. Hillsborough Twp. Bd. of Educ., OAL DKT. NO. EDS 226-05, 2006 N.J. AGEN LEXIS 485, Final Decision (July 31, 2006).

School board was not required to reimburse parents for unilateral placement of special education student (with reading problems) in an out-of-district school where the Board had presented persuasive proof that the placement of the student in its middle school would have met the requirements for a free and appropriate education. While the out-of-district school had an excellent reputation and it was possible that its program would have been better suited for student's needs, the law is clear: the Board does not have to provide for the best possible placement, its legal obligation is to provide for an appropriate education. Additionally, out-of-district school did not meet state and federal requirement of providing for education in the least restrictive environment. J.S. ex rel. M.S. v. Florence Twp. Bd. of Educ., OAL Dkt. No. EDS 8575-01, 2005 N.J. AGEN LEXIS 929, Final Decision (December 19, 2005).

Parents were entitled to reimbursement for unilateral placement of dyslexic child in private school where school district failed to satisfy its burden of showing that the program and placement it offered at public expense were appropriate for student. The nature and severity of child's learning, attention, and emotional problems were such that he required a small, protected, and structured educational setting with intensive remedial services for pupils with dyslexia but his proposed IEP was not reasonably calculated to provide him with a meaningful educational benefit because it would not have provided systemic reading instruction addressing all of the components of the phonological process throughout the academic day—private school would provide such benefit. R.P. ex rel. C.P. v. Princeton Reg'l Bd. of Educ., OAL Dkt. No. EDS 8360-04, 2005 N.J. AGEN LEXIS 558, Final Decision (September 26, 2005).

School board was entitled to summary decision because parents seeking reimbursement for child's tuition had unilaterally removed their child from public school without adequate notice to the school board. Parents, through their signature, agreed to the 2004-05 IEP and made no mention at the IEP meeting of any intention to withdraw child from the public school and only provided notice of their intention to withdraw the child seven days after signing a contract with the private school. D.D. and N.D. ex rel. A.D. v. Montclair Bd. of Educ., OAL Dkt. No. EDS 9295-05, 2005 N.J. AGEN LEXIS 618, Final Decision (October 17, 2005).

Reimbursement for unilateral placement of high school student at a therapeutic boarding school in Utah was denied where there was insufficient notice and insufficient involvement with the child study team. L.F. and D.F. ex rel. J.F. v. Morris Bd. of Educ., OAL DKT. NO. EDS 11681-04, 2005 N.J. AGEN LEXIS 560, Final Decision (September 26, 2005).

Parents of fourth-grade student were entitled to reimbursement for unilateral placement at a private school (Winston School); the student had made very little progress toward reading on his own during four years in the district schools. J.S. ex rel. M.S. v. Springfield Twp. Bd. of Educ., OAL DKT. NO. EDS 11220-04N, 2005 N.J. AGEN LEXIS 490, Final Decision (September 9, 2005).

School board pays for private school program where individualized placement program fails to meet special student's needs. M.E. v. Ridgewood Board of Education, 97 N.J.A.R.2d (EDS) 27.

## SUBCHAPTER 3. SERVICES

### Case Notes

State special education regulation limiting procedural safeguards applicable to disciplinary suspensions of students not yet receiving special education services to those students with respect to whom school district had already determined that evaluation for eligibility for services was warranted improperly narrowed scope of protections available under the Individuals with Disabilities Education Act (IDEA); under IDEA, procedural safeguards applied as soon as parent requested evaluation of a student or one of student's teachers expressed concern about student's behavior or performance to director of special education or other school district personnel. Baer v. Klagholz, 771 A.2d 603 (2001).

### 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 to provide all needed services during the hours students are in attendance.

1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the New Jersey Department of Education.

(c) Specialists in the area of disability include, but are 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 appropriately 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 provide services to the educational staff with regard to techniques, materials and programs. Services include, but are not limited to, the following:

- i. Consultation with school staff and parents;
- ii. Training of school staff; and

iii. The design, implementation and evaluation of techniques addressing academic and behavioral difficulties;

4. May deliver appropriate related services to students with disabilities;

5. May provide preventive and support services to nondisabled students; and

6. May participate on Intervention and Referral Services teams pursuant to N.J.A.C. 6A:16-8.

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

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

In (b), inserted "available to provide all needed services" and added (b)1; in (c), deleted "may" preceding "include", inserted "are" following "but", and inserted "appropriately" in the last sentence; rewrote (d).

(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(k)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 not less than 10 calendar days prior to the meeting.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(k)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 be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve 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.

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

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

In (c), deleted a reference to adult students; and in (d), substituted "may" for "shall not" in the last sentence.

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

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

In the introductory paragraph of (b), substituted "(g)" for "(e)"; in (c), substituted "(k)1" for "(i)1", and added "not less than 10 calendar days prior to the meeting" at the end; in (d), substituted "(k)2" for "(i)2" and inserted "The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10.".

#### Case Notes

Student was appropriately declassified and parents' application for tuition reimbursement for unilateral placement and for compensatory education for speech services was denied where burden was on parents to show that student could not achieve meaningful educational progress at the kindergarten in the district and that the private school with an aide was appropriate, but parties presented opposing appraisals of student's abilities. Although reports in evidence suggested student suffered from autism, the authors of the reports were not presented and the doctor who did testify could not identify specific behaviors that would qualify as severe or pervasive as required by N.J.A.C. 6A:14-3.5. W.H. ex rel.

A.H. v. Bloomsbury Bd. of Educ., OAL Dkt. No. EDS 8666-05 and EDS 8667-05, 2006 N.J. AGN LEXIS 488, Final Decision (August 2, 2006).

School board required to provide extended-year services to seven year old with speech disorder. J.M. v. Alloway Township Board of Education, 97 N.J.A.R.2d (EDS) 39.

#### 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;

2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;

3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and

4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.

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

educators as an acceptable instructional program for teaching severely autistic children. S.M. ex rel. B.M. v. Passaic City Bd. of Educ., OAL Dkt. No. EDS 9950-08, 2008 N.J. AGEN LEXIS 802, Emergent Relief Decision (September 11, 2008).

Because a high-school student with cerebral palsy had comprehension difficulties and reading and writing delays, goals were required for all areas of her mainstream curriculum because her disability affected her ability to perform in all educational areas, and it was a procedural violation of IDEA for the district to fail to provide goals and objectives for her general education curriculum. While accounts differed on just how severe her disability was and what effect it had on her cognitive functioning, it was clear that her disability did affect her progress in the general education curriculum as seen in her motor abilities, note-taking abilities, need for adaptive technology, and general processing delays. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Goals and objectives must be formulated for speech and language services that are related to general education performance, and it was a procedural violation of IDEA for a speech therapist to fail to provide numerical measurements of goals-and-objectives progress of a high-school student with cerebral palsy. While a speech reevaluation was detailed and discussed various speech-related matters that the speech therapist intended to work on with the student, there were no clear benchmarks that were outlined in the reevaluation and, additionally, speech updates did not meet the level of detailed measurable goals that were required. While strictly numerical evaluations of goals and objectives are not required, the therapist's subjective evaluations, made through observation and without the use of any standardized tests, met neither the federal nor the state requirements for IEP goals and objectives. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

It was necessary to convene an IEP meeting when occupational therapy services provided a high-school student with cerebral palsy were discontinued, and the decision to discontinue such services, made without consulting with the student's parents, amounted to a change of educational placement subject to the IDEA procedural requirements. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

While the goals for transition planning for a high-school student with cerebral palsy may have been somewhat vague and necessary agencies may not have attended transition meetings as required, nonetheless the school district did not violate the IDEA in implementing the student's transition plans because it offered substantial information and assistance tailored to the student's unique needs and personal goals. Since the IEP process is intended to be a collaborative process, the parents are required to make a good-faith effort to remedy what they believe is an inappropriate IEP, and by failing to follow up with transition plans and the recommended agencies, the student and her parents did not meet their responsibilities, for which the district could not be blamed. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

As a service provider for a high-school student with cerebral palsy, the student's one-on-one aide should have had access to the student's IEP and should have been informed of her duties under the IEP. However, there was nothing in the record that indicated that the aide ever requested to see the IEP and was denied, and, additionally, while the aide may not have received written instructions of her responsibilities under the IEP, she had attended IEP meetings and was given oral instructions about her duties. The district's failure to complete the required documentation indicating that the aide had been so informed was a minor procedural violation which in no way denied the student meaningful educational benefit. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

While the N.J.A.C. is unambiguous in requiring regular education teachers have access to a student's IEP, there was nothing in the record indicating that any of the regular education teachers of a high-school student with cerebral palsy asked to see her IEP and were denied, nor was there anything in the record indicating that her regular education

teachers did not know what their responsibilities were in implementing her IEP. Accommodations made for the student in both her regular and special education classes as called for in her IEP, indicated that her teachers had at least some knowledge of the details in her IEPs, and the failure of the school district to document the information given to the regular education teachers was a minor procedural violation, not amounting to a substantive deprivation of rights. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Claim of a high-school student with cerebral palsy and her parent that an expert on cerebral palsy was necessary in formulating the student's IEP was unsound, because the student's unique and individual needs, not the nature of the student's disability, should dictate her educational program. Z.R. v. Fort Lee Bd. of Educ., OAL Dkt. No. EDS 11423-06, 2008 N.J. AGEN LEXIS 828, Final Decision (August 22, 2008).

Current IEP for an 11-year-old female whose primary diagnosis was inverted duplication 15, a genetic disorder of the chromosomes, with symptoms including poor muscle tone, developmental delays, mental retardation, learning disabilities, seizure disorder, and autism features, was to be rewritten, and any future IEPs for her were to be written so as to comply fully with the requirements of N.J.A.C. 6A:14-3.7(e). The current IEP was deficient in that (a) the IEP goals and objectives lacked measurable terms and, thus, were subjective; (b) the goals and objectives were not detailed and measurable, and generally appeared to be functional goals; (c) since the goals and objectives were not measurable, neither the parents nor education personnel providing special education and related services could be apprised of the expected level of achievement for each goal; (d) the annual goals did not include benchmarks or short-term objectives related to meeting the child's needs that resulted from her disability so as to enable her to be involved in and progress in the general education curriculum; (e) the annual goals were not measurable with included benchmarks so as to meet the child's other educational needs resulting from her disability; and (f) a serious concern about the goals and objectives was that the child was working on many of the same skills dating back to 2003 without achieving mastery. F.G. ex rel. A.G. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 2063-08, 2008 N.J. AGEN LEXIS 822, Final Decision (August 19, 2008).

IEP on its face was inappropriate and failed to confer a meaningful educational benefit; among other things, it blatantly ignored the recommendation that the child, classified with autistic spectrum disorder, attend another year of preschool rather than kindergarten, and it lacked the details and services needed to address the child's needs, such as frequency and duration elements. M.F. and L.F. ex rel. N.F. v. Secaucus Bd. of Educ., OAL Dkt. No. EDS 10762-06, 2007 N.J. AGEN LEXIS 659, Final Decision (September 18, 2007).

Under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 794), a school district was required to provide disabled students with equal and meaningful access to an after-school program that operated as a not-for-profit enterprise fund because the program was not independent of the district. K.G. and J.G. ex rel. O.G. v. Morris Bd. of Educ., OAL Dkt. No. EDS 11872-06, 2007 N.J. AGEN LEXIS 480, Final Decision (August 10, 2007).

Reimbursement for unilateral placement out-of-district at the Lakeview School was denied where the ALJ found that the in-district IEP team reasonably determined that the student could not be satisfactorily educated in sixth grade middle school mainstream classes due to the difficulty and pace of those classes. K.M. and E.M. ex rel. Z.M. v. Flemington-Raritan Reg'l Bd. of Educ., OAL Dkt. No. EDS 10048-05 and EDS 56-06, 2006 N.J. AGEN LEXIS 1002, Final Decision (December 5, 2006).

Parent did not meet her burden to establish that the educational programs and placement determination by the district was inappropriate where her 13-year-old African-American son was classified as multiply disabled, including classifications of Oppositional Defiance Disorder, Emotionally Disturbed and Specific Learning Disability. Although parent sought to have her son's classification changed (she contended that he was not disabled) and to have him placed within the regular education programs in the district, she failed to meet her burden where district presented evidence of student's diagnosis with several

disabilities and of disruptive behavior at previous schools; to the extent that these disabilities disrupted the student's learning progress, they had to be dealt with before he could be returned to the mainstream setting. L.H. ex rel. H.M. v. Hamilton Twp Bd. of Educ., OAL Dkt. No. EDS 8628-06, 2006 N.J. AGN LEXIS 1040, Final Decision (December 15, 2006).

In the Third Circuit, the educational benefit conferred upon a child must be more than "de minimis" or trivial; it requires a satisfactory IEP to provide significant learning and a meaningful benefit. The benefit must be meaningful in light of the student's potential. To fulfill this mandate, the student's capabilities as to both "type and amount of learning" must be analyzed. When analyzing whether an IEP confers a meaningful benefit, adequate consideration must be given to the intellectual potential of the individual student to determine if that child is receiving a free and appropriate public education. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGN LEXIS 973, Final Decision (November 1, 2006).

There is no bright-line rule to determine the amount of benefit required of an appropriate IEP; a student-by-student analysis that carefully considers the student's individual abilities is required. There must be a degree, intensity, and quality of special education and related services adequate to provide an educational benefit to the individual child. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGN LEXIS 973, Final Decision (November 1, 2006).

Parent failed to meet burden of proving that the IEP for fifth-grade student with Pervasive Developmental Disorder would not provide student with a free and appropriate public education where parent did not offer any expert testimony, nor any reports that supported her position, and the letter from one doctor did not carry any weight since doctor had not evaluated student in two years, and there was no evidence that doctor had seen or evaluated the student's current program. The District's witnesses were highly credible and established that the IEP for student was appropriate and tailored to provide him with a meaningful educational benefit, the District relied upon the independent evaluations conducted a few months prior in formulating student's current program and placement, and the District also took input from student's teachers in formulating the IEP. A.A. ex rel. E.S. v. Stradford Borough Bd. of Educ., OAL Dkt. No. EDS 8360-06, 2006 N.J. AGN LEXIS 973, Final Decision (November 1, 2006).

Parent of a child with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder, and Post Traumatic Stress Disorder failed to present sufficient evidence that the child's IEP was insufficient where the parent did not call any experts nor did any teacher or administrator testify that the IEP was imprecise. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2470-06, 2006 N.J. AGN LEXIS 832, Final Decision (September 29, 2006).

Balancing the equities and considering all relevant factors, parents of preschool child with autistic spectrum disorder were entitled to reimbursement for half of the costs of tuition and transportation to an out-of-district school, until such time as the district board of education offered the child an IEP that provided a free appropriate public education, where procedural inadequacies had seriously hampered the parents' opportunity to participate in the formulation process and to develop an IEP which addressed their child's unique educational needs. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

District's use of an interim IEP, which provided for an inadequate 10 hours of home instruction per week for a preschool autistic child "in the interim" of the district securing an out-of-district placement in a preschool disabled self-contained classroom, and which lacked adequate details about the program sought, was unfair to parents and did not appear to be supported by the regulations. W.C. and S.C. ex rel. R.C. v. Summit Bd. of Educ., OAL DKT. NO. EDS 1547-05, 2006 N.J. AGN LEXIS 708, Final Decision (August 2, 2006), aff'd, 2007 U.S. Dist. LEXIS 95021 (D.N.J. Dec. 31, 2007) (unpublished opinion).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P., OAL Dkt. No. EDS 8656-05, 2006 N.J. AGN LEXIS 5, Final Decision (January 3, 2006).

Proposed IEP for 16-year-old high school student was not reasonably calculated to provide him with a meaningful educational benefit because it failed to give sufficient consideration to his disabilities in the context of his underlying issues of anxiety and fragile self-esteem. S.C. ex rel. D.C. v. Montgomery Twp. Bd. of Educ., OAL DKT. NO. EDS 10147-04, 2005 N.J. AGN LEXIS 933, Final Decision (December 22, 2005), aff'd, 2007 U.S. Dist. LEXIS 6071 (D.N.J. Jan. 26, 2007) (unpublished opinion).

Parent's due process petition seeking changes to child's IEP was dismissed as moot and parties were ordered to participate in a scheduled IEP meeting because the relief that parent sought could only be obtained through attendance and participation at an IEP meeting, and that meeting was in the process of being scheduled by the school district as required by N.J.A.C. 6A:14-3.7(h) and N.J.A.C. 6A:14-7.1. S.S. ex rel. K.S. v. Lawnside Borough Bd. of Educ., OAL Dkt. No. EDS 8681-05, 2005 N.J. AGN LEXIS 930, Final Decision (December 1, 2005).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during the 2003 extended school year because although student's case manager could not attribute the progress student made to either the school program or the home-based program or both, it was clear, from the case manager's testimony that progress was made during the 2002-03 school year and the 2003 extended school year and it was equally clear that the student had the benefit of both school-based ABA instruction and the home-based program. Both programs were successful in providing a meaningful educational benefit and it was impossible to allocate the proportion of benefit derived from each of the programs. J.F. ex rel. G.F. v. West Orange Bd. of Educ., OAL Dkt. No. EDS 9099-04, 2005 N.J. AGN LEXIS 659, Final Decision (October 31, 2005).

Parents were entitled to reimbursement for the expenses incurred in providing home-based Applied Behavioral Analysis (ABA) program for autistic student during 2003-04 where ABA program was an integral and important part of the student's progress made during the school year and where the school district relied on previous year's IEP to which the parents had not consented. J.F. ex rel. G.F. v. West Orange Bd. of Educ., OAL Dkt. No. EDS 9099-04, 2005 N.J. AGN LEXIS 659, Final Decision (October 31, 2005).

Once a parent raises the issue of the appropriateness of the IEP and the educational placement, the school district bears the burden of proving that it is providing an appropriate education to the child. In evaluating the appropriateness of a school district's program, the "some educational benefit" standard articulated in *Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S. Ct. 1602, 73 L. Ed. 2d 690 (1982) has evolved into a "meaningful educational benefit" standard; "meaningful" has not been further defined, although it has been held that it requires more than a "trivial educational benefit." School district is not required to provide the best education available. D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ., OAL Dkt. No. EDS 8203-04, 2005 N.J. AGN LEXIS 617, Final Decision (October 18, 2005).

Law did not support parents' insistence on a "certified" Wilson and/or Orton-Gillingham instructor for a dyslexic student where school district presented evidence that it had competent instruction in the Wilson technique, and evidence was insufficient to show that student's slow progress in reading was attributable to the credentials (or an alleged lack thereof) of the school district's teaching staff. D.Y. ex rel. M.Y. v. Hopewell Valley Reg'l Bd. of Educ., OAL Dkt. No. EDS 8203-04, 2005 N.J. AGN LEXIS 617, Final Decision (October 18, 2005).

Dyslexic student's IEP was reasonably designed to confer meaningful educational benefit where the goals and objectives of the IEP were



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) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:

1. Curricular or instructional modifications or specialized instructional strategies;
2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
3. Teacher aides;
4. Related services;
5. Integrated therapies;
6. Consultation services; and
7. In-class resource programs.

(b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. Single subject resource programs outside the general education class;
2. A special class program in the student's local school district;
3. A special education program in another local school district;
4. A special education program in a vocational and technical school;
5. A special education program in the following settings:
  - i. A county special services school district;
  - ii. An educational services commission;

iii. A jointure commission; and

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

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

7. A community rehabilitation program;

8. A program in a hospital, convalescent center or other medical institution;

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

10. 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;

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

12. 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.

(c) 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.

1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.

(d) 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) or 4.1(e).

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

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

Added (b)1.

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

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

Added new (a) and recodified former (a) as (b), with substantial changes; recodified former (b) and (c) as (c) and (d), with an amendment to the first N.J.A.C. reference at new (d)4.

#### Case Notes

School board could not consider as least restrictive environment a private preschool program in which preschool handicapped child could receive supplementary services since it was not accredited by the state. *T.R. v. Kingwood Township Board of Education*, 32 F.Supp.2d 720 (D.N.J. 1998).

Parents of disabled students failed to sustain their burden of demonstrating that state special education regulations were arbitrary, capricious, or unreasonable, or were violative of Individuals with Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

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).

School board was required to place 18-year-old, non-verbal, autistic boy in private institution, notwithstanding the fact that the institution was not approved by the New Jersey Department of Education as a private school provider, where parents and school board both stipulated that private institution was the only appropriate placement, out-of-district day and residential placements had not worked for the student in the past, no other placement had been proposed, and the choice was the private school or no program at all. It would be contrary to the purposes of the Individuals with Disabilities Education Act to deny placement based on the alleged technical deficiency. *C.A. ex rel. N.A. v. Middle Twp Bd. of Educ.*, OAL Dkt. No. EDS 8703-06, 2007 N.J. AGEN LEXIS 285, Final Decision (April 30, 2007).

School district was entitled to disclose a copy of student's pupil records, over parents' objections, to other potential placements believed to be able to meet student's educational needs where student was eligible for special education and related services but school district determined that out-of-district placement was required to meet student's disabilities and to be consistent with his IEP. *Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P.*, OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

A school district is not obligated to provide an in-district placement as long as it complies with its obligation to have available a full continuum of alternative placements to meet the needs of its students with disabilities. *Berlin Twp Bd. of Educ. v. M.P. ex rel. S.P.*, OAL Dkt. No. EDS 8656-05, 2006 N.J. AGEN LEXIS 5, Final Decision (January 3, 2006).

School Board granted permission to place student in P.I. program. *Jersey City v. A.C.*, 97 N.J.A.R.2d (EDS) 55.

No emergency out-of-state placement for special education student if petition fails to meet standard for emergency relief. *A.C. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 21.

Autistic preschooler was not ready to be mainstreamed for non-academic 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 ½ day kindergarten class and one ½ 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.