

**CHAPTER 14  
SPECIAL EDUCATION**

**Authority**

N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:39-1.1, 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq.; and U.S.P.L. 93-112, Sec. 504, 94-142, 99-457, 101-476, 105-17, and 108-446.

**Source and Effective Date**

R.2006 d.315, effective August 4, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14, Special Education, expires on August 4, 2013. See: 43 N.J.R. 1203(a).

**Chapter Historical Note**

Chapter 14, Special Education, was adopted as R.1998 d.334, effective July 6, 1998. See: 30 N.J.R. 1219(b), 30 N.J.R. 2435(a).

Chapter 14, Special Education, was readopted as R.2003 d.387, effective September 8, 2003. See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Chapter 14, Special Education, was readopted as R.2006 d.315, effective August 4, 2006. As a part of R.2006 d.315, Appendices A through E were repealed, and Appendices A through G, were adopted as new rules, effective September 5, 2006. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

### Law Review and Journal Commentaries

Special Education: A Promise to Children with Disabilities. Viola S. Lordi, 193 N.J.L.J. 10 (1998).

#### 6A:14-1.1 General requirements

(a) The rules in this chapter supersede all rules in effect prior to September 5, 2006 pertaining to students with disabilities.

(b) The purpose of this chapter is to:

1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.);
2. Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an individualized education program is in effect for the student by that date;
3. Ensure that a free, appropriate public education is available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade;
4. Ensure that the services and placement needed by each student with a disability to receive a free, appropriate public education are based on the student's unique needs and not on the student's disability;
5. Ensure that students with disabilities are educated in the least restrictive environment;
6. Ensure the provision of special education and related services;
7. Ensure that the rights of students with disabilities and their parents are protected;
8. Assist public and private agencies providing educational services to students with disabilities; and
9. Ensure the evaluation of the effectiveness of the education of students with disabilities.

(c) The rules in this chapter shall apply to all public and private education agencies providing publicly funded educational programs and services to students with disabilities.

1. Programs and services shall be provided to students age three through 21.
2. Programs and services may be provided by a district board of education at its option to students below the age of three and above the age of 21.
3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of children with disabilities below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent;
2. Be administered, supervised and provided by appropriately certified and qualified professional staff members;
3. Be located in facilities that are accessible to the disabled; and
4. Meet all requirements of this chapter.

(e) With the exception of students placed in nonpublic schools according to N.J.A.C. 6A:14-6.5, all students with disabilities shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(f) Each district board of education shall ensure that the hearing aids worn by children who are deaf and/or hard of hearing are functioning properly.

(g) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.

(h) All public and private agencies that provide educational programs and services to students with disabilities shall maintain documentation demonstrating compliance with this chapter.

(i) A school district shall not require a child to obtain a prescription for a substance covered by the Controlled Dangerous Substances Act (21 U.S.C. §§801 et seq.) as a condition of attending school, receiving an evaluation for eligibility for special education and related services or for receiving special education and related services.

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

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

In (b), added i through iii.

14. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided;

i. The district board of education shall maintain information to demonstrate its efforts to:

(1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities;

(2) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others;

(3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;

(4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and

(5) Provide for joint training activities of parents and special education, related services and general education personnel;

15. Students with disabilities are included in all State-wide and districtwide assessment programs, with appropriate accommodations, where necessary;

16. Instructional materials will be provided to blind or print-disabled students in a timely manner, consistent with a plan developed by the district;

17. For students with disabilities who are potentially eligible to receive services from the Division of Developmental Disabilities in the Department of Human Services, the district will provide, pursuant to the Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services; and

18. When the school district utilizes electronic mail, parents are informed as to whether they may use electronic mail to submit requests to school officials regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education. If this is permitted, parents shall be informed of the procedures to access the electronic mail system.

(c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through 14 above.

(d) Annually, each district board of education shall describe, in accordance with instructions from the Department of Education, how it will use the funds under Part B of the IDEA during the next school year.

(e) Annually, each district board of education shall submit:

1. A report of the numbers of students with disabilities according to their Federal disability category, age, racial-ethnic background, and placement;

2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to students with disabilities and the full-time equivalence of their assignments and relevant information on current and anticipated personnel vacancies and shortages; and

3. Any additional data reports as required by the Department of Education to comply with the IDEA (20

U.S.C. §1400 et seq.) including, but not limited to, the number of students with disabilities who are:

- i. Exiting education;
- ii. Subject to suspensions and expulsions;
- iii. Removed to interim alternative education settings;
- iv. Participating in Statewide assessments;
- v. Postsecondary transition outcomes; and
- vi. Preschool outcomes.

(f) Upon request, reports in addition to those under (e) above shall be submitted to the Department of Education including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated and newly classified.

(g) The district board of education shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the district board of education, or LEA under Part B of the IDEA.

(h) Each district board of education shall ensure that a special education parent advisory group is in place in the district to provide input to the district on issues concerning students with disabilities.

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 the section.

#### 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).

State special education regulations requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Education Act (IDEA) that each state have policies and procedures to ensure that practical method for locating disabled students be developed; neither IDEA nor its regulations established any particular "child find" method to be used, or require states to establish uniform methods. *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§1400 et seq.) and its implementing regulations at 34 CFR §§300.1 et seq., which terms are incorporated by reference herein.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

"Adult student" means a person who has attained age 18, who is not under legal guardianship and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Approved private school for students with disabilities" corresponds to "approved private school for the handicapped" and means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

"Assistive technology device" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix F.

"Assistive technology service" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix G.

"Consent" means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;
2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
3. Understands that the granting of consent is voluntary and may be revoked at any time; and
4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

"Custody" means that a child has been removed by the State agency empowered to do so from the care of his or her parent(s) and the right of the parent(s) to make educational decisions on behalf of the child has been terminated by a court of appropriate jurisdiction.

"Department of Education" means the New Jersey Department of Education.

"District board of education" means the school district of residence, the board of trustees of a charter school, the State

agency or other public education agency which acts as the district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program and the provision of a free appropriate, public education to students with disabilities except as defined otherwise.

“Early childhood program” means a general education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by a governmental agency.

“Extended school year services” means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student’s IEP at no cost to the parent.

“General Statewide assessment” means a Statewide assessment given to all students of a particular grade level except for those students with disabilities whose IEP specifies that they will participate in the alternate proficiency assessment.

“Individualized education program” (IEP) means a written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student’s educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

“IEP team” means the group of individuals who are responsible for the development, review and revision of the student’s individualized education program. The members of IEP team are listed at N.J.A.C. 6A:14-2.3(k)2.

“Native language” means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine the language of the student.

“Nonpublic school” means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades in which a student age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

“Nonpublic school student” means any student who is enrolled full time in a nonpublic school. A student who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent resides.

“Parent” means the natural or adoptive parent, the legal guardian, foster parent when willing to so serve, a surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term “parent” shall include the adult student as defined above.

“Referral” means the written request for an initial evaluation to determine whether a student is eligible for services under this chapter.

“Related services” is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix B.

“Special education” is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix C.

“Speech-language specialist” means a speech correctionist or speech-language specialist.

“Student” means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

“Student age” means the school age of a student as defined by the following:

1. “Age three” means the attainment of the third birthday. Children with disabilities attaining age three shall have a free, appropriate public education available to them provided by the district board of education.
2. “Age five” means the attainment of age five by the month and day established as the kindergarten entrance cutoff date by the district board of education. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided preschool services for the balance of that school year.
3. “Age 21” means the attainment of the 21st birthday by June 30 of that school year. Students with disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

“Student with a disability” means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

“Transition services” for students age 16 or older, is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix D. For students under age

16, transition services is defined as set forth in N.J.A.C. 6A:14-3.7(e)11.

“Ward of the State” means a student who, pursuant to an order of a court of competent jurisdiction, is under the guardianship of an agency of the State, is a foster child for whom the foster parent is not the student’s parent or is a student who, pursuant to an order of a court of competent jurisdiction, is in the custody of the State child welfare agency.

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

Amended “Adult student”, “Consent”, “Department of Education”, “Native language”, “Parent”, “Related services”, “Special education” and “Transition services”; inserted “Early childhood program” and “Extended school year services”; deleted “Recreation”; updated the N.J.A.C. references in “Individualized education program” and “IEP team”.

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Amended “General Statewide assessment” and amended “Student age”.

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

Rewrote the introductory paragraph; changed name of definition “Approved private school for the disabled” to “Approved private school for students with disabilities”; rewrote definitions “Assistive technology device”, “Assistive technology service”, “Individualized education program”, “Parent”, “Related services”, “Special education”, and “Transition services”; added definitions “Custody” and “Ward of the State”; in definition “Early childhood program”, substituted “general” for “regular”; and in definition “IEP team”, substituted “education” for “educational” and updated the N.J.A.C. reference.

#### Case Notes

Definition of extended school year program (ESY) in N.J.A.C. 6A:14-1.3 in no way indicates that the ESY changes the June 30 end of the actual school year as defined in N.J.S.A. 18A:36-1. C.T. v. Verona Bd. of Educ., 464 F.Supp.2d 383, 2006 U.S. Dist. LEXIS 88248 (D.N.J. 2006).

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).

School district that conducted a special education evaluation was not required to finance an independent evaluation after a student had already transferred to a different district under N.J.A.C. 6A:14-1.3. The district was not responsible for financing an independent evaluation for an assessment for services the student would no longer be using, and because the transfer was a change of circumstances that occurred prior to the adjudication, the matter was not actionable. Bd. of Educ. of the Township of Ewing, Cnty. of Mercer v. M.B., OAL Dkt. NO. EDS 10302-12, 2013 N.J. AGEN LEXIS 8, Final Decision (January 15, 2013).

School district’s decision to de-classify a 12-year-old with a specific learning disability was upheld because, while the student may have exhibited some academic weaknesses in oral reading fluency and word attack and decoding skills, those weaknesses did not rise to the level of a disability; although the weaknesses may have impacted her reading comprehension, her instructional level was average or above average on a fifth grade level and she did not exhibit a severe discrepancy between her intellectual ability and achievement. R.M. ex rel. H.M. v. Hadden Heights Bd. of Educ., OAL Dkt. No. EDS 4902-08, 2009 N.J. AGEN LEXIS 294, Final Decision (May 28, 2009).

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. Regulatory scheme speaks of transition services as a process that facilitates the child’s movement from school to post-school activities. Thus, the program offered should provide the child with a genuine chance to explore options beyond high school. 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).

Failure to gain timely approval for child study team does not defeat tenure rights gained in interim (citing former regulation). Bisson v. Bd. of Ed., Alpha Boro., Warren Cty., 1978 S.L.D. 187.

Definition of handicapped child under former N.J.A.C. 6:28-1.2. T.A. v. Bd. of Ed., Edgewater Park Twp., Burlington Cty., 1973 S.L.D. 501.

## SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

### 6A:14-2.1 General requirements

(a) Prior to receiving a high school diploma, a student with a disability age 16 through 21 who voluntarily leaves a public school program may reenroll at any time up to and including the school year of his or her 21st birthday.

(b) Upon request by a parent, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6A:14), student records rules (N.J.A.C. 6A:32), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

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

In (b), deleted reference to adult students.  
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), updated the N.J.A.C. reference for student records rules; deleted (c).

#### Case Notes

Successful challenge to local board’s decision to remove multiply handicapped 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).

Grandmother who sought placement for her granddaughter at an alternative high school but could not articulate reasons why she felt the original placement was inappropriate was not entitled to relief; the grandmother claimed that her granddaughter’s behavioral problems would be better in smaller groups, but she could provide no basis and no illustrative examples to support the conclusion. R.L. ex rel. J.S. v. Passaic City Bd. of Educ., OAL Dkt. No. EDS 9573-06, 2006 N.J. AGEN LEXIS 809, Final Decision (October 5, 2006).

Three-year old special education student did not require extended services. J.L. v. Board of Education of Englewood, 97 N.J.A.R.2d (EDS) 2.

Handicapped student received entirely inappropriate and inadequate education and was entitled to placement in out-of-state residential program. L.P. v. Hamilton Board of Education, 96 N.J.A.R.2d (EDS) 360.

Emergency relief request regarding classified student’s suspension was rendered moot by student’s withdrawal from school. Brick Township Board of Education v. M.F., 96 N.J.A.R.2d (EDS) 127.

Student with multiple disabilities required extra year of special education due to chronic absenteeism. *G.K. v. Roselle Borough*, 95 N.J.A.R.2d (EDS) 86.

Impaired student's research paper was acceptable for grading as long as marking periods in subject were passed. *T.D. v. Rutherford Board*, 95 N.J.A.R.2d (EDS) 47.

Parents not entitled to emergent relief; no evidence offered to show that student was socially maladjusted. *N.P. v. Freehold Regional High School*, 94 N.J.A.R.2d (EDS) 218.

Handicapped child with increasing level of seizure activity; extended-year residential care. *J.S. v. West Windsor-Plainsboro Regional Board of Education*, 94 N.J.A.R.2d (EDS) 152.

Emergency placement for neurologically impaired child was not available absent evidence of irreparable harm. *M.B. v. Manville*, 93 N.J.A.R.2d (EDS) 233.

Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of study was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. *Milt v. East Windsor Regional School District*, 9 N.J.A.R. 159 (1986).

State Department of Human Services not a necessary party to special education placement determination; joinder of party denied due to lack of authority; consolidation denied as unqualified. *A.N. v. Clark Bd. of Ed.*, 6 N.J.A.R. 360 (1983).

Standing of foster parents (citing former regulations). *Orr v. Bd. of Ed., Caldwell-West Caldwell, Essex Cty.*, 1976 S.L.D. 264.

### 6A:14-2.2 Surrogate parents, wards of the State and foster parents

(a) Each district board of education or responsible State agency shall ensure that the rights of a student are protected through the provision of an individual to act as surrogate for the parent and assume all parental rights under this chapter when:

1. The parent as defined according to N.J.A.C. 6A:14-1.3 cannot be identified;
2. The parent cannot be located after reasonable efforts;
3. An agency of the State of New Jersey has guardianship of the student, or the student is determined a ward of the State and, if the student is placed with a foster parent, the foster parent declines to serve as the student's parent; or
4. The student is an unaccompanied homeless youth as that term is defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434(a)6).

(b) A district board of education shall make reasonable efforts to appoint a surrogate parent within 30 days of the determination that a surrogate parent is needed for a student.

(c) If the district fails to appoint a surrogate parent for a ward of the State, a judge may appoint a surrogate parent if the judge determines a surrogate parent is necessary for such student.

(d) Each district board of education or responsible State agency shall establish a method for selecting and training surrogate parents.

(e) The person serving as a surrogate parent shall:

1. Have no interest that conflicts with those of the student he or she represents;
2. Possess knowledge and skills that ensure adequate representation of the student;
3. Not be replaced without cause;
4. Be at least 18 years of age; and
5. If the person serving as the surrogate parent is compensated, a criminal history review pursuant to N.J.S.A. 18A:6-7.1 shall be completed for the individual;

(f) The person(s) serving as a surrogate parent may not be an employee of the Department of Education, the district board of education or a public or nonpublic agency that is involved in the education or care of the child. A surrogate parent may be paid solely to act in that capacity.

(g) When a student (who is or may be a student with a disability) is in the care of a foster parent, and the foster parent is not the parent of the student as defined in N.J.A.C. 6A:14-1.3, the district board of education where the foster parent resides shall contact the student's case manager at the Division of Youth and Family Services (DYFS) in the Department of Human Services to:

1. Determine whether the parent retains the right to make educational decisions; and
2. Determine the whereabouts of the parent.

(h) If the parent retains the right to make educational decisions and the parent's whereabouts are known to the district board of education, the school shall obtain all required consent from and provide written notices to the parent.

(i) If the district board of education cannot ascertain the whereabouts of the parent, the foster parent, unless that person is unwilling to do so, shall serve as the parent pursuant to N.J.A.C. 6A:14-1.3. If there is no foster parent, or the foster parent is unwilling to serve as the student's parent, the district board of education shall consult with the student's case manager at DYFS to assist in identifying an individual to serve as a surrogate parent and appoint a surrogate parent and obtain all required consent from, and provide written notices to, the surrogate parent.

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.2001 d.397, effective November 5, 2001.  
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (d), inserted "a" preceding "public", "or nonpublic" preceding "agency", and substituted "that is involved in the education or care of the child" for "providing services to the student".

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

Section was "Surrogate parents and foster parents". Rewrote the section.

**Case Notes**

Successful challenge to local board's decision to remove multiply handicapped child from residential school into home and local school programs. *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).

Individuals with Disabilities Act (IDEA) imposed no federal requirement of statewide uniformity of methods for the selection and training of surrogate parents, and state special education regulations which provided for establishment of selection and training systems by each district board of education or responsible state agency were not arbitrary, capricious or unreasonable. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations defining eligibility for appointment as a surrogate parent which did not prohibit appointment of an employee of a nonpublic agency involved in the education or care of the child as that child's surrogate parent improperly failed to conform to federal conflict-of-interest standard. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Regulation valid. In re: Repeal of N.J.A.C. 6:28, 204 N.J.Super. 158, 497 A.2d 1272 (App.Div.1985).

Natural parent of a child who was in the custody of the Division of Youth and Family Services did not retain the right to make educational decisions for the child; rather, the resource family reserved the right to address the special education matters pending before the Office of Administrative Law (OAL) unless he or she so declined, at which time the appointed surrogate would then be empowered to address the pending matters before the OAL. *S.S. ex rel. K.S. v. Lawnside Borough Bd. of Educ.*, OAL DKT. EDS 6093-07 and EDS 6094-07, 2007 N.J. AGEN LEXIS 776, Final Decision (October 15, 2007)

mediation agreement that is the subject of the enforcement request was required to have occurred or have been completed. A request for enforcement of a mediation agreement may be made by writing to the State Director of the Office of Special Education Programs, Department of Education. If there are multiple clauses in the agreement, the 90-day time frame to seek enforcement shall be measured separately for each clause, based on the date by which each is required by the agreement to occur. Upon receipt of this request, the Office of Special Education Programs shall make a determination regarding the implementation of the agreement. If it is determined that the district has failed to implement the agreement or part of the agreement, the Office of Special Education Programs shall order the district to implement the agreement or part of the agreement, as appropriate. If any part of the mediation agreement is modified by subsequent accord of the parties, enforcement may not be sought with respect to that part of the agreement.

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

In (d)3, substituted "10" for "20" preceding "calendar days"; and added (d)10.

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (d)9, amended N.J.A.C. reference and substituted "Appendixes A and D" for "Appendix".

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 former (b)1 as new (b); in (c), added "or with respect to the student that is the subject of the mediation" at the end; rewrote (d).

#### Case Notes

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

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

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

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

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

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

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

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

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

"Stay put" provision acted as an automatic statutory injunction against a district's effort to cease providing five hours a week of individualized services from an educational consulting program for a 19-year-old disabled student, as set forth in his IEP. O.U. ex rel. *S.U. v. Cherry Hill Twp. Bd. of Educ.*, OAL Dkt. No. EDS 578-09, 2009 N.J. AGEN LEXIS 78, Emergency Relief Decision (March 9, 2009).

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).

Parents of an autistic middle school aged child were ordered to participate in a resolution session prior to receiving a plenary hearing regarding their child's placement and IEP where the special education rules encouraged settlement and provided for mediation pursuant to N.J.A.C. 6A:14-2.6. *G.K. ex rel. A.K. v. Northern Burlington County Regional Bd. of Educ.*, OAL DKT. EDS 6736-07, 2007 N.J. AGEN LEXIS 649, Final Decision (September 7, 2007).

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

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

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

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

(a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.

1. A request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:

i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the satisfaction of the parent; or

ii. The district board of education withheld information that was required by law to be provided to the parent.

(b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when it denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).

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

(d) Except when a response is required to be filed by a district pursuant to (e) below, the party against whom a request for a due process hearing is directed shall, within 10 days of the filing of a request for a due process hearing, provide a written response specifically addressing the issue(s) raised in the request for a due process hearing to the party that requested the due process hearing.

(e) When a parent requests a due process hearing, or an expedited due process hearing (for disciplinary issues) and the district has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the district shall send a written response to the parent within 10 days of receiving the petition. The written response shall include:

1. An explanation of why the agency proposed or refused to take the action raised in the request for a due process hearing;
2. A description of other options that the IEP team considered and the reasons those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
4. A description of the factors that are relevant to the agency's proposal or refusal.

(f) A request for a due process hearing, or expedited due process hearing (for disciplinary issues) serves as notice to the respondent of the issues in the due process complaint. The respondent may assert that the notice does not meet the requirements of 20 U.S.C. §1415 and, therefore, the notice is not sufficient. The notice for a hearing will be considered sufficient unless the respondent notifies the Office of Special Education Programs and the complaining party (petitioner), in writing, within 15 days of receipt of the request for a due process hearing.

1. The sufficiency challenge will be forwarded to the Office of Administrative Law (OAL) and within five days of receipt of the written objection, an administrative law judge will determine whether the notice meets the requirements of 20 U.S.C. §1415 and will notify the parties in writing of the determination.

2. If the notice is determined sufficient, the timelines for resolution activities and for conducting a due process hearing will continue. If the notice is deemed insufficient, the administrative law judge may dismiss the case and the petitioner may re-file with the Office of Special Education Programs, or the administrative law judge may grant permission to amend the request.

i. If the case is dismissed and the petitioner files a new request for a due process hearing, all applicable timeframes and procedures set forth in these rules shall commence anew.

ii. If the administrative law judge allows the petitioner to amend the request for a due process hearing as part of a sufficiency challenge, the applicable timeframes and procedures shall commence to run from the time of the administrative law judge's determination.

(g) When the Office of Special Education Programs receives a request for a due process hearing, the matter shall be processed and, as appropriate, mediation and a due process hearing in accordance with these rules will be made available to the parties.

(h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity to resolve the matter before proceeding to a due process hearing in a resolution meeting. The school district must conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.

1. The resolution meeting shall include a representative of the school district who has authority to make decisions on behalf of the school district.

i. The school district shall not include its attorney unless the parent is accompanied by an attorney.

ii. An advocate shall not be considered an attorney for purposes of determining whether a school district shall be entitled to bring its attorney to a resolution meeting.

2. For a due process hearing, the resolution meeting shall be held within 15 days of receiving the parents' request. For an expedited due process hearing, the resolution meeting shall be held within seven days of receiving the request.

3. The resolution meeting shall not be audio or video recorded by either party unless both the district board of education and the parent agree to record the resolution meeting.

4. If a request for a due process hearing is not resolved to the satisfaction of the parents within 30 days of the receipt of the petition, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for a due process hearing.

5. If an expedited due process hearing request is not resolved to the satisfaction of the parents within 15 days of receipt of the request, the Office of Special Education Programs shall transmit the case to the Office of Administrative Law for an expedited due process hearing.

6. If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.

i. Either party may void the agreement, in writing, within three business days of signing the agreement.

ii. If the agreement is not voided within the three business days, it is legally binding.

iii. If either party fails to implement the written agreement, it is enforceable in any State court of competent jurisdiction or in the United States District court.

iv. If a dispute arises over the voiding of a resolution meeting agreement, the matter shall be transmitted to the Office of Administrative Law for a due process hearing.

7. If the requirements of this subsection with respect to scheduling and conducting a resolution meeting are not adhered to, issues concerning adherence to such procedures shall be raised in a due process hearing, and shall not be raised in a request for a complaint investigation pursuant to N.J.A.C. 6A:14-9.2.

8. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the office of special education programs in accordance with N.J.A.C. 6A:14-2.6.

i. Parents shall indicate on their request for a due process hearing whether mediation is also requested.

ii. If the district agrees to mediation in lieu of a resolution meeting, a representative of the district shall contact the Office of Special Education Programs to facilitate the scheduling of the mediation conference.

iii. If the parties fail to participate in mediation within 30 days of the date the request for a due process hearing is submitted, the matter shall be transmitted to the Office of Administrative Law for a due process hearing with a notation that the parties declined a resolution meeting and requested mediation, but that the mediation conference failed to occur.

9. The parties may agree in writing to waive the resolution meeting and proceed directly to a hearing.

i. Parents may indicate on the request for a hearing that they desire to waive the resolution meeting.

ii. If the parent and a representative of the district with decision-making authority agree in writing to waive the resolution meeting, the parties shall notify the Office of Special Education Programs that they have agreed to waive the resolution meeting.

iii. Upon receipt of a signed waiver, the matter will be transmitted to the Office of Administrative Law for a hearing.

10. The parties shall notify the Office of Special Education Programs, in writing, of the result of the resolution meeting. If the matter has not been resolved or withdrawn, it shall be transmitted to the office of administrative law after 30 days from the date the request was received.

11. When a district board of education files a request for a due process hearing, no resolution meeting shall be held. The matter shall be mediated if the parties agree and, if necessary, transmitted to the Office of Administrative Law for a due process hearing.

(i) After a petition requesting a due process hearing is submitted to the Office of Special Education Programs, it may only be amended with the consent of the other party, or if an administrative law judge allows the party to amend the petition.

1. If a petition is amended with the consent of a district board of education, the district shall be afforded the opportunity to hold a resolution meeting in accordance with (h) above in order to resolve the issues raised in the amended petition. The timeframes for holding and completing the resolution meeting shall begin on the date the amended petition is filed with the Office of Special Education Programs.

2. If a petition is amended by order of an administrative law judge, such order shall be issued no later than five days prior to the date the matter is heard, and no resolution meeting is required to address the issues raised in the amended petition.

(j) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the conclusion of the resolution period described in (h)2, 4 and 5 above unless specific adjournments are granted by the administrative law judge in response to requests by either party to the dispute.

1. The 15- or 30-day resolution period set forth in (h)2, 4 and 5 above shall end either at the expiration of the applicable 15- or 30-day time period, or when both parties notify the Office of Special Education Programs, in writing, that they have waived the resolution meeting and intend to proceed directly to a due process hearing.

(k) The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters, alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:

1. Impeded the child's right to a FAPE;

2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or

3. Caused a deprivation of educational benefits.

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

1. The decision in a due process hearing shall be provided in an electronic form if the parent requests that it be issued in an electronic form.

(m) If the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq., the parent may request an expedited hearing.

(n) To remove a student with a disability when school personnel maintain that it is dangerous for the student to be in the current placement and the parent and district cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days according to 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.;

1. The procedure in 20 U.S.C. §1415(k)(3) may be repeated as necessary.

(o) An expedited hearing shall be requested according to the following:

1. The request for a due process hearing shall specify that an expedited hearing is requested due to disciplinary action;

2. When a request for an expedited hearing is received, the Office of Special Education Programs shall acknowledge receipt of the request, shall provide information to the parent regarding free and low cost legal services, shall provide mediation if requested by both parties in lieu of a resolution meeting and shall transmit the case to the Office of Administrative Law according to the following:

i. A representative from the Office of Special Education Programs shall telephone the clerk of the Office of Administrative Law who will provide a hearing date;

ii. The expedited hearing shall be conducted and completed within 20 school days of receipt of the request by the Office of Special Education Programs;

iii. The resolution meeting or, if requested by both parties, mediation shall be scheduled within seven days and completed within 15 days;

iv. If the mediation results in agreement, the conclusions of the parties shall be incorporated into a written agreement prepared by the mediator at the mediation conference and signed by each party. The matter shall be considered settled. The agreement shall be binding according to N.J.A.C. 6A:14-2.6(d)10;

3. Upon receiving the acknowledgment of the request from the Office of Special Education Programs, the parties shall complete the exchange of relevant records and information at least two business days before the hearing; and

4. The expedited hearing shall result in a written decision being provided to the parties within 10 school days of the completion of the due process hearing without exceptions or extensions.

(p) In reviewing a decision with respect to a manifestation determination, the administrative law judge shall determine whether the district board of education has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.

(q) In reviewing a decision under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq. to place the student in an interim alternative educational setting, the administrative law judge shall apply the standards in 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§300.1 et seq.

(r) Either party may apply in writing for a temporary order of emergent relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergent relief shall note that a copy was sent to the other party.

1. Emergent relief shall only be requested for the following issues:

i. Issues involving a break in the delivery of services;

ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;

iii. Issues concerning placement pending the outcome of due process proceedings; and

iv. Issues involving graduation or participation in graduation ceremonies.

(s) Prior to transmittal of a request for a due process hearing or an expedited hearing to the Office of Administrative Law, an application for emergent relief shall be made to the State Director of the Office of Special Education Programs. After transmittal of a request for a due process hearing or an expedited hearing, any application for emergent relief shall be made directly to the Office of Administrative Law.

1. Emergent relief may be requested according to N.J.A.C. 1:6A-12.1. Emergent relief may be granted if the administrative law judge determines from the proofs that:

i. The petitioner will suffer irreparable harm if the requested relief is not granted;

ii. The legal right underlying the petitioner's claim is settled;

iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(t) If either party fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction. If the public agency responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law with respect to the student's program or services, a request for enforcement may be made by the parent or the parent's attorney on behalf of the student. The request shall be made in writing to the State Director of the Office of Special Education Programs, Department of Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred. The request shall include a copy of the decision issued by the Office of Administrative Law. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur. Upon receipt of this request, the district board of education shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent. The Office of Special Education Programs shall determine the implementation of the decision. If it is determined that the district has failed to implement the decision or part of the decision, the Office of Special Education Programs shall order the district to implement the decision or part of the decision, as appropriate. If any part of the decision is modified by subsequent agreement

limitations on the amount of time the student is removed and the requirement to provide services shall be consistent with procedures in N.J.A.C. 6A:14-2.8. Additionally, in accordance with 20 U.S.C. §1415(k)(5), protections for children not yet eligible for special education and related services shall apply. (See chapter Appendix A.)

(g) Audiometric screening according to N.J.A.C. 6A:16-2.2(e)3 shall be conducted for every student referred to the child study team for a special education evaluation.

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

(i) The New Jersey Department of Education incorporates by reference the provisions of the Individuals with Disabilities Education Act of 2004 at 20 U.S.C. §1412(c)3 and its implementing regulations at 34 CFR §§300.1 et seq. regarding child find. (See chapter Appendix E.)

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

In (e), rewrote the introductory paragraph.  
Amended by R.2000 d.230, effective June 5, 2000.  
See: 32 N.J.R. 755(a), 32 N.J.R. 2052(a).

In (d)2, deleted a reference to adult students; and rewrote (a), (e) and (f).

Amended by R.2001 d.397, effective November 5, 2001.  
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (f), added new last sentence; added (i).  
Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

Amended N.J.A.C. references in (a)3i and (g).  
Amended by R.2006 d.315, effective September 5, 2006.  
See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).  
Rewrote the section.

#### Case Notes

Requirements of regulations under Individuals with Disabilities Act (IDEA) that each state have on file with Secretary of Education description of how "child find" policies and procedures will be monitored to ensure that the state educational agency (SEA) obtained information on number of children identified within each category of disability, information adequate to evaluate effectiveness of those policies and procedures, and description of method used by state to determine which children were receiving special education and related services were not met by state regulations merely mandating that each school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring each district board of education to develop written procedures for locating potentially disabled students satisfied requirement of the Individuals with Disabilities Education Act (IDEA) that each state have policies and procedures to ensure that practical method for locating disabled students be developed; neither IDEA nor its regulations established any particular "child find" method to be used, or require states to establish uniform methods. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations which failed to include portions of the Individuals with Disabilities Education Act (IDEA) or its regulations setting forth filing requirements in connection with "child find" requirements were impermissibly inconsistent with federal standard, despite state's contention that filing requirements applied only to state and not to local school districts, where result of failure to incorporate federal standard in regulations was lack of public awareness of applicable standards and how standards were applied. *Baer v. Klagholz*, 771 A.2d 603 (2001).

District provided ample evidence that the escalating behavioral and academic problems a 15-year-old student was experiencing, including the increased number and nature of reported disciplinary incidents and failing seventh grade, strongly suggested problems which could only have been resolved through a comprehensive evaluation of the student in order to address his educational needs; thus, where the student's mother refused to cooperate in scheduling and producing the student for the requested assessments, the district was obligated to request an order directing the mother to consent to and cooperate in scheduling and completing the four assessments comprising the initial evaluation. *Pemberton Twp. Bd. of Educ. v. J.L. ex rel. A.M.*, OAL Dkt. No. EDS 7823-10, 2010 N.J. AGEN LEXIS 432, Final Decision (August 11, 2010).

Although the district did not strictly comply with the requirements of an identification meeting under N.J.A.C. 6A:14-3.3(e) where it failed to have a regular or special education preschool teacher present, the procedural error did not significantly hamper the process at the pre-evaluation meeting because the district had the benefit of the parents' input and the written input of the child's teacher. *A.P. ex rel. J.F.-P. v. Clifton Bd. of Educ.*, OAL Dkt. No. EDS 07554-09, 2010 N.J. AGEN LEXIS 302, Final Decision (June 25, 2010).

Where a student's parents placed him in a parochial school on Staten Island in the State of New York, the "district of attendance" was in New York and the district in Jersey City was no longer responsible for "child find" with respect to the student. *I.L. ex rel. D.L. v. Jersey City Bd. of Educ.*, OAL Dkt. No. EDS 12533-08, 2009 N.J. AGEN LEXIS 167, Final Decision (March 25, 2009).

School board did not violate the "child find" provision because the provision was triggered only when the board had reason to suspect a disability, and reason to suspect that special education services were needed to address that disability; although the student was suffering from crying, depression, sleep difficulty, poor appetite, weight loss, identity issues, and sleep disturbance, those conditions were not known to school personnel. *J.S. ex rel. R.S. v. South Orange-Maplewood Bd. of Educ.*, OAL DKT. EDS 7417-05, 2006 N.J. AGEN LEXIS 440, Final Decision (June 14, 2006), aff'd, 2008 U.S. Dist. LEXIS 24031 (D.N.J. March 26, 2008).

When it becomes apparent to teachers that a student may have a disability, they must refer the child directly to the child study team for a special education evaluation. They may not try other interventions first. *Montclair Bd. of Educ. v. S.W. ex rel. T.M.*, OAL DKT. NO. EDS 12937-05, 2006 N.J. AGEN LEXIS 47, Final Decision (January 12, 2006).

Where teachers had sufficient reason to conclude that a student might have a disability that was inhibiting him from receiving a free and appropriate program of education, based on a drastic change in his grades and behavior, the board of education was authorized to conduct an initial evaluation of the student. *Montclair Bd. of Educ. v. S.W. ex rel. T.M.*, OAL DKT. NO. EDS 12937-05, 2006 N.J. AGEN LEXIS 47, Final Decision (January 12, 2006).

#### 6A:14-3.4 Evaluation

(a) The child study team, the parent and the regular education teacher of the student who has knowledge of the student's educational performance or if there is no teacher of the student, a teacher who is knowledgeable about the district's programs shall:

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

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

- i. Whether the student has a disability under this chapter;
- ii. The present levels of academic and functional achievement and related developmental needs, and educational needs of the student; and
- iii. Whether the student needs special education and related services; and

3. Determine which child study team members and/or specialists shall conduct each assessment that is part of the evaluation.

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

(c) If the parent refuses to provide consent to conduct the initial evaluation, the district may file for a due process hearing pursuant to N.J.A.C. 6A:14-2.7 to compel consent to evaluate.

(d) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

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

1. If the parent repeatedly fails or refuses to produce the child for the evaluation, the time period above shall not apply.

2. If a child enrolls in the school of a district board of education after an initial evaluation was undertaken by another district board of education, but before it was completed, and the new district is making progress so as to ensure a prompt completion of the evaluation, and the district and parent agree to a specific modified timeframe for completing the evaluation, the agreed-upon timeframe for completing the evaluation shall be applied.

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

(f) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. Such evaluation shall include at least two assessments and shall be conducted by at least two members of the child study team in those areas in which they have appropriate training or are qualified through their professional licensure or educational certification and other specialists in the area of dis-

ability as required or as determined necessary. Each evaluation of the student shall:

1. Be conducted in the language or form most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally, unless it is not feasible to do so;

2. Apply standards of validity, reliability and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment;

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

i. Individually administered;

ii. Valid and reliable;

iii. Normed on a representative population; and

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

4. Include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child with limited English proficiency, assessment of the student's communication needs, and assessment of the need for assistive technology devices and services. Each of the following components shall be completed by at least one evaluator:

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

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

(2) In the case of a student of preschool age, a child study team member in an environment appropriate for a child of that age;

ii. An interview with the student's parent;

iii. An interview with the teacher(s) referring the potentially disabled student;

iv. A review of the student's developmental/educational history including records and interviews;

v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and

vi. One or more informal measure(s) which may include, but not be limited to, surveys and inventories; analysis of work; trial teaching; self-report; criterion referenced tests; curriculum based assessment; and informal rating scales; and

N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.

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

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

2. Consider the academic, developmental and functional needs of the student;

3. Consider the results of the initial evaluation or most recent evaluation of the student and, as appropriate, the student's performance on any general State or districtwide assessment;

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

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

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

7. Consider the communication needs of the student;

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

9. Consider whether the student requires assistive technology devices and services.

i. The district board of education shall ensure that assistive technology devices or assistive technology services, or both, as defined in the IDEA, are made available to a student with a disability if required as part of the student's special education, related services or supplementary aids and services.

ii. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team determines that the student needs access to those devices in order to receive a free, appropriate public education;

10. Beginning at age 14, or younger if determined appropriate by the IEP team, consider the need for consultation from the Division of Vocational Rehabilitation

Services, Department of Labor and other agencies providing services for individuals with disabilities; and

11. Review the preschool day to determine what accommodations and modifications may be required to allow the child to participate in the general education classroom and activities.

(d) The IEP may be amended without a meeting of the IEP team as follows:

1. The IEP may be amended if the parent makes a written request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees;

2. The school district provides the parent a written proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;

3. All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district; and

4. If an IEP is amended pursuant to this subsection, such amendment shall not affect the requirement in (i) below that the IEP team review the IEP at a meeting annually, or more often if necessary.

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

1. A statement of the student's present levels of academic achievement and functional performance, including, but not limited to:

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

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

2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student specific, functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.

3. Such measurable annual goals shall include benchmarks or short-term objectives related to:

- i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
  - ii. Meeting each of the student's other educational needs that result from the student's disability;
4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aides and services shall be based, to the extent practicable, on peer reviewed research. A statement of the program modifications or supports for school personnel that shall be provided for the student:
- i. To advance appropriately toward attaining the measurable annual academic and functional goals;
  - ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and
  - iii. To be educated and participate with other students with disabilities and nondisabled students;
5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting;
6. An explanation of the extent, if any, to which the student shall not participate with nondisabled students in the general education class and in extracurricular and nonacademic activities;
7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.
- i. If the IEP team determines that the student shall not participate in a particular general Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student according to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student;
8. A statement which specifies the projected date for the beginning of the services and modifications described in (e)3 above, and the anticipated frequency, location, and duration of those services and modifications.
9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school graduation requirements, the statement shall include:

- i. A rationale for the exemption or modification based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.11; and
  - ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.
10. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;
11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:
- i. A statement of the student's strengths, interests and preferences;
  - ii. Identification of a course of study and related strategies and/or activities that:
    - (1) Are consistent with the student's strengths, interests, and preferences; and
    - (2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living;
  - iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor; and
  - iv. As appropriate, a statement of any needed inter-agency linkages and responsibilities;
12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of those elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals.
- i. The transition services as defined in IDEA shall consist of a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and be based on the individual student's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 6A:14-3.8 Reevaluation

(a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted sooner if condi-

tions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district both agree that a reevaluation prior to the expiration of one year as set forth above is warranted. When a reevaluation is conducted sooner than three years from the previous evaluation as set forth above, the reevaluation shall be completed in accordance with the timeframes in (e) below.

1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.

(b) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:

1. The IEP team shall review existing evaluation data on the student, including:

- i. Evaluations and information provided by the parents;
- ii. Current classroom based assessments and observations; and
- iii. Observations by teachers and related services providers; and

2. On the basis of that review, and input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine:

- i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);
- ii. The present levels of academic achievement and functional performance and educational and related developmental needs of the student;
- iii. Whether the student needs special education and related services, and the academic, developmental, functional and behavioral needs of the student and how they should appropriately be addressed in the students IEP; and

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

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

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

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

4. If additional data are needed, the IEP team shall determine which child study team members and/or specialists shall administer tests and other assessment procedures to make the required determinations in (b)2i through iv above.

(c) Prior to conducting any assessment as part of a re-evaluation of a student with a disability, the district board of education shall obtain consent from the parent according to N.J.A.C. 6A:14-2.3.

1. Individual assessments shall be conducted according to N.J.A.C. 6A:14-3.4(f)1 through 5 or 3.4(g), as appropriate.

(d) A reevaluation shall be conducted when a change in eligibility is being considered, except that a reevaluation shall not be required before the termination of a student's eligibility under this chapter due to graduation or exceeding age 21.

(e) Unless the parent and district board of education agree to waive a reevaluation, all requirements of this section for performing a reevaluation shall, as applicable, be completed within 60 days of the date the parent provides consent for the assessments to be conducted as part of the reevaluation or by the expiration of the three year timeframe from completion of the prior evaluation or reevaluation, whichever occurs sooner.

(f) When a reevaluation is completed:

1. A meeting of the student's IEP team according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(c) shall be conducted to determine whether the student continues to be a student with a disability. A copy of the evaluation report(s) and documentation of the eligibility shall be given to the parent at least 10 days prior to the meeting.

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

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

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

Rewrote (b); amended (c) and (e); in (f)1, deleted "or adult student" following "parent" in the second sentence; added (g).

Amended by R.2001 d.397, effective November 5, 2001.  
See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (d), substituted "through 3" for "and 2".

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); made a grammatical correction in paragraph (b)2; rewrote (b)2ii and (b)2iii; in (b)3i and introductory paragraph of (c), updated the N.J.A.C. reference; recodified former (d) as new (c)1, updating N.J.A.C. references; recodified former (e) as new (d); added new (e); in (f)1 and (f)2, updated N.J.A.C. references; in (f)1, added "at least 10 days prior to the meeting" at the end.

#### Case Notes

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

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

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

School district complied with a 17-year-old learning disabled student's periodic reevaluations where those evaluations were held annually, were conducted by people who were trained in their field, included input from the student's parents, and the results comported with the student's performance levels. *North Brunswick Twp. Bd. of Educ. v. R.M. ex rel. N.M.*, OAL Dkt. No. EDS 03145-10, 2010 N.J. AGEN LEXIS 368, Final Decision (July 27, 2010).

District was entitled to emergent relief in order to conduct a comprehensive psychiatric diagnostic assessment of a 12-year-old multiply disabled student because, although her parents and the district disagreed on whether her behaviors had escalated, enough evidence existed to warrant at least a psychiatric component or an early re-evaluation in order to facilitate the district's ability to provide FAPE for the student through an appropriate placement. *River Edge Bd. of Educ. v. E.F. ex rel. V.F.*, OAL Dkt. No. EDS 05680-09, 2009 N.J. AGEN LEXIS 313, Order for Emergent Relief (June 1, 2009).

Board of education's denial of parent's request for an independent reading evaluation and a functional assessment of a 16-year-old pupil who was classified as other health impaired was proper where board maintained that reading was a component of the educational evaluation, and that a functional assessment reflected various aspects and components of the psychological, educational, speech, and social evaluations, and the parent offered no evidence to the contrary. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Since board of education and parent were in agreement that certain assessments were necessary as part of the reevaluation of a 16-year-old pupil who was classified as other health impaired, and since board of education offered two possible independent evaluators for each evaluation but parent maintained that she should be given a choice of more than two evaluators for each evaluation, but she failed to identify any problem with any of the evaluators offered by the board or suggest any others of her own, the board was granted consent to have the independent evaluations conducted by any of the evaluators listed. *Scotch Plains-Fanwood Bd. of Educ. v. S.Z. ex rel. T.Z.*, OAL Dkt. No. EDS 1911-08, 2008 N.J. AGEN LEXIS 892, Final Decision (May 8, 2008).

Parents of a disabled child were ordered to allow the child to participate in an educational assessment, a psychiatric assessment, and an occupational therapy assessment to be conducted as a part of an early re-evaluation where the district's ability to meet its obligation to the child had been impeded by the inability of the parties to function in the spirit of cooperation. *Ramsey Bd. of Educ. v. L.E. ex rel. M.S.*, OAL DKT. EDS 7943-06, 2007 N.J. AGEN LEXIS 121, Final Decision (March 8, 2007).

3. The appropriate school district staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.

(h) When the IEP of a student with a disability does not describe any restrictions, the student shall be included in the general education program provided by the district board of education.

1. When instruction in general education subjects or content areas is provided to groups consisting solely of students with disabilities, the size of the groups and age range shall conform to the requirements for special class programs described in this subchapter. An exception to the age range and group size requirements may be requested by writing to the Department of Education through the county office according to N.J.A.C. 6A:14-4.9.

2. When students with disabilities participate in physical education, intramural and interscholastic sports, non-academic and extracurricular activities in groups consisting solely of students with disabilities, the age range and group size shall be based on the nature of the activity, needs of the students participating in the activity and the level of supervision required.

(i) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-10, 11, 14, and 14.1 and this chapter.

(j) Each district board of education shall ensure that all students with disabilities have available to them the variety of educational programs and services available to nondisabled students.

(k) The district board of education shall provide the parent with the opportunity to observe the proposed educational placement, including the general education setting, special class programs and out-of-district placements in a program operated by another district board of education or a private school placement, prior to implementation of the IEP.

(l) When a student with a disability receives instruction for a particular subject area in either a single-subject resource program or a special class program, the student shall receive at least the same amount of instructional time as that provided general education students for each subject area. For students in a single-subject resource program outside the general education class, the student's IEP shall specify the proportion of time in the general education classroom and the resource program for each subject area.

1. The provisions of this subsection shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. However, school districts may, at their discretion, adhere to the provisions of this subsection prior to July 1, 2007.

(m) When a student with a disability transfers from a non-public school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.

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), inserted a reference to preschoolers with disabilities; in (d), inserted "with the following exception" in introductory paragraph and added 1; in (g)2, added "immediately"; in (k), deleted a reference to adult student.

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), deleted "change"; rewrote (c), (d) and (g); in the introductory paragraph of (h), substituted "general education" for "regular school"; in (h)1, rewrote the first sentence and updated the N.J.A.C. reference at the end; rewrote (k); added (l) and (m).

#### Case Notes

Former standard of service for local school bds. incorporated into the Federal Education of the Handicapped Act. Bd. of Educ. of E. Windsor Regional School v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Regulatory description of appropriate educational program being one in the least restrictive environment found to mean least even in which educational progress rather than regression can take place. Bd. of Educ. of E. Windsor Regional School District v. Diamond, 808 F.2d 987 (3rd Cir.1986).

Focus in determining appropriateness of program is on program offered. Lascari v. Board of Educ. of Ramapo Indian Hills Regional High School Dist., 116 N.J. 30, 560 A.2d 1180 (1989).

In filing its challenge to a charter school's recommended placement for a disabled student, the district of residence was required to follow the procedural requirements of N.J.A.C. 6A:23A-15.4 and immediately request a copy of the student's records to determine whether a less-restrictive program could have met his needs. Although the regulation did not speak in the imperative, and stated that the resident district "may" request records, the provision should have been read in concert with N.J.A.C. 6A:14-4.1(g)(3), which addressed programming for children new to a district, and clearly required a new district to take "reasonable steps to promptly obtain the student's records." L.Y. ex rel. J.Y. v. Bayonne Bd. of Educ., OAL Dkt. No. EDS 11766-09 and EDS 11764-09, 2010 N.J. AGEN LEXIS 438, Final Decision (August 25, 2010).

N.J.A.C. 6A:14-4.1(k), which provides that a parent must be given the opportunity to observe a proposed educational placement prior to implementation of the IEP, must be read to apply to outside consultants retained by the parents; the presence of an express provision pertaining to the parent should not be read as an exclusion of all others. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

Parents of a multiply disabled 16-year-old student were entitled to emergent relief and the district was ordered to place the student in his original out-of-district placement pending a plenary hearing because the in-district program offered by the district was not "comparable" to the program provided by the out-of-district school; although it was clear that the district made a good faith effort to provide the student with an appropriate program in the least restrictive environment, the in-district program was just not the equivalent of the program he was originally receiving. *M.H. ex rel. S.H. v. Northern Burlington Co. Regional Bd. of Educ.*, OAL Dkt. No. EDS 303-09, 2009 N.J. AGEN LEXIS 77, Decision on Emergent Relief (February 9, 2009).

Where the Greater Newark Charter School had placed a charter school special education student at a private school and the student subsequently moved from Newark to East Orange, the East Orange school district was not authorized to change the student's private placement; although the student was required to register in the East Orange district, the student was still an enrollee of the charter school under N.J.S.A. 18A:36A-8(b). A school district's challenge to a charter school's placement of a special education student or to the district's responsibility for costs is through an appeal to the Commissioner of Education under the Charter School Program Act, N.J.S.A. 18A:36A-11(b) and 18A:6-9, and not through the IDEA. *E.M. ex rel. J.B. v. East Orange Bd. of Educ.*, OAL Dkt. No. EDS 12493-07, 2008 N.J. AGEN LEXIS 378, Final Decision (June 26, 2008).

Parents of an autistic child who sought payment for an extended school year program were entitled to reimbursement based on the fact that, the moment that the child became a resident of the school district, he was entitled to a free, appropriate public education, despite the fact that the child arrived in the district without an IEP in place. The notice requirements in N.J.A.C. 6A:14-2.10 simply did not apply to the particular factual situation. *J.M. ex rel. R.M. v. Mountain Lakes Bd. of Educ.*, OAL DKT. EDS 7173-06, 2006 N.J. AGEN LEXIS 1039, Final Decision (December 7, 2006).

District failed to comply with the requirements of N.J.A.C. 6A:14-4.1(g)3 with respect to a multiply disabled student's interim educational program because, even though the district was aware that her initial placement was not consistent with available information, it did not take effective measures to correct this situation; the student began her time at the school on August 2004, but the district did not present an IEP until December 3, 2004, which was an unreasonable delay. *F.D. ex rel. I.D. v. Ramsey Bd. of Educ.*, OAL Dkt. No. EDS 9938-04, 2005 N.J. AGEN LEXIS 489, Final Decision (August 29, 2005).

Student entitled to same-sex aide for personal care during overnight camping trip. *M.W. v. Shamong Township Board of Education*, 97 N.J.A.R.2d (EDS) 102.

Petition regarding responsibility for costs of special education student's academic program was dismissed for lack of jurisdiction; allocation of costs was provided for in contract, and Commissioner of Education cannot decide issues of contract law. *Cherry Hill v. Borough of Haddonfield*, 96 N.J.A.R.2d (EDU) 1032.

Handicapped child entitled to same number of school hours offered to non-handicapped children of same age. *D.S. v. Cresskill Board of Education*, 96 N.J.A.R.2d (EDS) 379.

Failure to show that special education student had substantially regressed during the summer supported denial of extended school year services. *S.T. v. Ewing Board of Education*, 96 N.J.A.R.2d (EDS) 283.

Adverse outcome of prior federal lawsuit brought by handicapped former student against school board for failure to comply with IEP barred current action by student against board. *E.A. v. Willingboro Township Board of Education*, 96 N.J.A.R.2d (EDS) 113.

Child with increasing difficulties in reading and spelling required perceptually impaired classification to provide him with necessary

support in a special education program. *Spring Lake Board v. P.M.*, 95 N.J.A.R.2d (EDS) 267.

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

Educational placement out of district was appropriate for perceptually impaired student's educational needs despite parent's noncooperation. *P.M. v. Brick Township Board*, 95 N.J.A.R.2d (EDS) 201.

Residential placement for multiply handicapped child with various diagnosed disorders ranging from loving to potentially injurious was only appropriate placement in least restrictive environment. *Z.D. v. Fort Lee Board v.* 95 N.J.A.R.2d (EDS) 193.

Services of education expert for special education child with maladaptive behavior were no longer necessary. *Services of B.L. v. Englewood City Board*, 95 N.J.A.R.2d (EDS) 125.

Student with multiple disabilities required extra year of special education due to chronic absenteeism. *G.K. v. Roselle Borough*, 95 N.J.A.R.2d (EDS) 86.

Placement out-of-district was not appropriate for handicapped child when opportunities in district were equal. *L.A. v. Union County*, 95 N.J.A.R.2d (EDS) 78.

Provision of all special education services based upon 180-day school year. *S.M. v. Township Board of Education*, 94 N.J.A.R.2d (EDS) 176.

Residential school placement; behavioral problems manifested only in the home environment. *R.W. v. Howell Township Board of Education*, 94 N.J.A.R.2d (EDS) 39.

Multiply handicapped student; transportation by bus company other than one retained by school board. *N.S. v. Trenton Board of Education*, 94 N.J.A.R.2d (EDS) 36.

Removal of an emotionally disabled child from a private school and placing him in public school was not detrimental. In the Matter of *J.C.*, 94 N.J.A.R.2d (EDS) 15.

Placement of an emotionally handicapped and learning disabled child in a special education program was warranted. *Ewing Township Board of Education v. J.R.*, 94 N.J.A.R.2d (EDS) 11.

Constant attention by a registered or licensed practical nurse required by a severely handicapped student was a medical need. *C.F. v. Roxbury Township Board of Education*, 94 N.J.A.R.2d (EDS) 6.

School board would not be liable for expenses of student's attendance at private unapproved placement. *C.D. v. Wanaque Board of Education*, 93 N.J.A.R.2d (EDS) 304.

Program provided by school board; appropriate for child's learning disability. *J.M. v. Manville Bd. of Educ.*, 93 N.J.A.R.2d (EDS) 100.

Board of education had appropriately addressed visually impaired 19-year-old's educational, occupational therapy, mobility and other needs; no obligation to provide special education services following graduation. *L.I. v. Montville Board of Education*, 93 N.J.A.R.2d (EDS) 1.

Changing placement of 10-year-old Downs Syndrome student to in-district special education class was not warranted. *Lakewood Board of Education v. M.C.*, 92 N.J.A.R.2d (EDS) 244.

Petitioners' action to require local school board to pay residential costs and tuition retroactively denied. *M.B., Through His Parents, R.B. and J.B. v. Bernards Twp. Bd. of Educ.*, 9 N.J.A.R. 179 (1985).

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor, Division of Vocational Rehabilitation Services, the New Jersey Department of Human Services, Commission for the Blind and Visually Impaired and the Department of Human Services, Division of Developmental Disabilities, to provide vocational evaluation, work adjustment training, job coaching, skill training, supported employment and time-limited job coaching;

2. Placement shall be made according to the student's IEP. The IEP shall specify the core curriculum content standards to be met and shall address how the instruction will be provided; and

3. Within 10 calendar days of placement in community rehabilitation facilities, the district board of education shall provide written notification of the placement to the county office.

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

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

In (b)3, divided the learning and/or language disabilities program category into Mild to moderate and Severe.

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

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

Amended (b)3; in (d)2, added second sentence.

Amended by R.2001 d.397, effective November 5, 2001.

See: 33 N.J.R. 2375(a), 33 N.J.R. 3735(b).

In (f), rewrote 1.

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

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

Rewrote the section.

Notice of Rule Invalidation.

See: 39 N.J.R. 4572(a).

Validity of 6A:14-4.7(a)2 affected by Council on Local Mandates decision *In the Matter of Complaints Filed by the Special Services School Districts of Burlington, Atlantic, Cape May, and Bergen Counties* (Adopted by the Council and Issued: July 26, 2007).

#### Case Notes

State special education regulations governing placement of secondary-level students in community rehabilitation programs for vocational rehabilitation services, permitting students to be placed in programs approved by the state Division of Vocational Services (DVRS), were insufficiently broad to encompass placement in programs approved by agencies serving the blind or those so severely developmentally disabled as to be unemployable, as required under the Individuals with Disabilities Education Act (IDEA). *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-4.8 Program criteria: home instruction

(a) A student with a disability shall have his or her IEP implemented through one to one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.

1. Prior written notification that a district intends to provide home instruction shall be provided to the Department of Education through its county office.

2. Notification shall be effective for a maximum of 60 calendar days at which time renewal of the notification may be made. Each renewal shall be for a maximum of 60 calendar days.

3. A written record of the student's home instruction, including dates and times during which home instruction is provided, shall be maintained, and the teacher providing instruction shall be appropriately certified as teacher of students with disabilities or for the subject or level in which the instruction is given.

4. Instruction shall be provided for no fewer than 10 hours per week. The 10 hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher or teachers on at least three separate days.

5. Instruction shall be provided at a location conducive to providing educational services, taking into consideration the student's disability and any unique circumstances. The parent shall be consulted in determining the appropriate location for the provision of home instruction.

6. If a parent repeatedly fails to make a student available for scheduled home instruction, the district board of education shall consider whether the student is truant in accordance with N.J.S.A. 18A:38-27 and proceed accordingly.

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

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

Rewrote (a)1 and 2.

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

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

In the introductory paragraph of (a), substituted "with a disability" for "classified as disabled"; rewrote (a)3; in (a)4, inserted "or teachers"; added (a)5 and (a)6.

#### Case Notes

Emergent relief of 15 hours of home instruction per week ordered as an interim measure for an autistic student who suffered abusive violation of rights at a residential placement. *S.T. v. Matawan-Aberdeen Reg'l Bd. of Educ.*, OAL Dkt. No. EDS 2382-08, 2008 N.J. AGEN LEXIS 297 (April 14, 2008).

Under N.J.S.A. 18A:36A-11(b), the school district of residence is not responsible for the costs of home instruction for disabled charter school students, as opposed to private day or residential school placement; clear statutory and regulatory distinctions exist between "home instruction," which may be provided for through contracts with "private clinics and agencies," N.J.A.C. 6A:14-5.1(c)1iv, and "private schools for the disabled." *Golden Door Charter School v. State-Operated School Dist. of Jersey City*, OAL Dkt. No. EDU 1169-06, 2007 N.J. AGEN LEXIS 302, Commissioner's Decision (March 15, 2007), aff'd, SB No. 10-07, 2007 N.J. AGEN LEXIS 887 (N.J. State Bd. of Educ. August 1, 2007), aff'd per curiam, 2008 N.J. Super. LEXIS 129 (App.Div. 2008).

School district properly ordered homebound instruction for 60 days based on urgent circumstances after it was discovered that a student had a threatening photograph on his confiscated cellular phone and had also left a suicide note; the student's state of mind needed to be fully evaluated prior to his re-entry into the district and maintaining a self-contained placement was substantially likely to result in injury to the student or to others. *E.B. ex rel. E.A. v. Lower Cape May Regional Bd. of Educ.*, OAL Dkt. No. EDS 8923-07, 2007 N.J. AGEN LEXIS 743, Decision on Emergent Relief (November 20, 2007).

Parent of a multiply disabled 17-year-old who functioned at a pre-K level was entitled to 20 weeks of compensatory education to be provided to the child by a teacher certified to teach the disabled and trained to work with a child with significant behavioral issues where the parent demonstrated that the school board did not provide a suitable education and related services from which the child could derive a meaningful educational benefit. The district's decision to place the student on a

home instruction program, rather than to focus efforts on solving the underlying behavior issue which interfered with his placement ignored the fact that the home instruction plan was woefully inadequate for the student's needs and not in conformance with the IEP still in place. *M.S. ex rel. K.E. v. Camden City Bd. of Educ.*, OAL DKT. EDS 698-07, 2007 N.J. AGEN LEXIS 473, Final Decision (August 3, 2007).

School board's petition to change the status of a student as a special education student in its middle school to a student receiving homebound instruction was granted because the student's conduct was explosive and unpredictable, including attacking classmates in the classroom, in the hallways, in the playground and in the school bus; the student was a danger to herself, to her fellow students, and to staff. *Piscataway Bd. of Educ. v. L.D.*, OAL Dkt. No. EDS 885-99 and EDS 891-99 (Consolidated), 2005 N.J. AGEN LEXIS 721, Final Decision Granting Application for Emergent Relief (November 11, 2005).

Classified student was properly placed on home instruction due to his disruptive behavior. *East Windsor Board of Education v. B.F.*, 96 N.J.A.R.2d (EDS) 195.

Special education school's closure requires unprepared autistic student's home instruction under strict program until attainment of generalization. *J.S. v. High Bridge Board of Education*, 96 N.J.A.R.2d (EDS) 68.

Home instruction was not better for student than placement in self-contained class for pupils having emotional difficulties. *Hamilton Township v. J.C.*, 95 N.J.A.R.2d (EDS) 157.

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.

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

Placement of violent student in home study program pending results of child study team. *Oaklyn Bd. of Educ. v. C.G.*, 93 N.J.A.R.2d (EDS) 97.

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

Gifted student with cerebral palsy was entitled to home instruction as interim placement. *J.M. v. Woodcliff Lake Board of Education*, 92 N.J.A.R.2d (EDS) 249.

#### 6A:14-4.9 Exceptions

(a) Exceptions for the age range and group sizes specified in N.J.A.C. 6A:14-4.4 through 4.7 shall be granted:

1. On an individual basis;
2. Only with prior written approval of the Department of Education through its county office; and
3. For a period not to exceed the balance of the school year.

(b) The county office shall determine whether the granting of the exception would interfere with the delivery of a free, appropriate public education to the student, or other students in the group and on that basis shall either:

1. Approve the request; or
2. Deny the request.

(c) If the request is denied, the district is still obligated to implement the IEP.

(d) The parent of a student with a disability for whom the exception is requested, and the parents of the students who are affected by the request for an exception shall be informed by the district board of education that such a request is being submitted to the county office of education.

(e) Upon approval of the exception by the county office, the district board of education or the appropriate education agency shall inform the parents of the students with disabilities who are affected by the exception.

(f) As of July 6, 1998, no waivers or equivalencies pursuant to N.J.A.C. 6:3A shall be granted to this chapter.

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)3, substituted "the balance of the school" for "one" preceding "year"; and in (d), deleted a reference to adult student.

Recodified from N.J.A.C. 6A:14-4.10 and amended by R.2006 d.315, effective September 5, 2006.

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

In (f), deleted last sentence. Former N.J.A.C. 6A:14-4.9, Home instruction due to temporary illness or injury for students with or without disabilities, repealed.

#### 6A:14-4.10 Statewide assessment

(a) Students with disabilities shall participate in the Statewide assessment system according to the following:

1. Except as provided in (a)2 below, students with disabilities shall participate in each content area of the general Statewide assessment for their grade. Accommodations and modifications approved by the Department of Education shall be provided when determined necessary by the IEP team to students with disabilities who participate in the general Statewide assessments.

2. Students with disabilities shall participate in the Alternate Proficiency Assessment (APA) in each content area where the nature of the student's disability is so severe that the student is not receiving instruction in any of the knowledge and skills measured by the general Statewide assessment and the student cannot complete any of the types of questions on the assessment in the content area(s) even with accommodations and modifications.

3. Following the 11th grade, students with disabilities who are required to pass the HSPA for graduation and have not done so shall participate in the SRA in accordance with N.J.A.C. 6A:8. If a student is participating in the SRA as determined by the IEP team, the student shall not be required to again participate in the HSPA and pass that assessment.

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

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

In (a)4, inserted "after one administration of the High School Proficiency Test when the student fails one or more sections of the test and" following "when".

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

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

Rewrote the section.

Recodified from N.J.A.C. 6A:14-4.11 and 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)1, deleted "or age" following "grade"; in (a)3, added the second sentence. Former N.J.A.C. 6A:14-4.10, Exceptions, recodified to N.J.A.C. 6A:14-4.9.

#### **6A:14-4.11 Graduation**

(a) The IEP of a student with a disability who enters a high school program shall specifically address the graduation requirements. The student shall meet the high school graduation requirements according to N.J.A.C. 6A:8-5.1(c), except as specified in the student's IEP. The IEP shall specify which

requirements would qualify the student with a disability for the State endorsed diploma issued by the school district responsible for his or her education.

(b) Graduation with a State endorsed diploma is a change of placement that requires written notice according to N.J.A.C. 6A:14-2.3(f) and (g).

1. As part of the written notice, the parent shall be provided with a copy of the procedural safeguards statement published by the Department of Education.

2. As with any proposal to change the educational program or placement of a student with a disability, the parent may resolve a disagreement with the proposal to graduate

the student by requesting mediation or a due process hearing prior to graduation.

3. In accordance with N.J.A.C. 6A:14-3.8(d), a reevaluation shall not be required.

4. When a student graduates or exceeds the age of eligibility, the student shall be provided a written summary of his or her academic achievement and functional performance prior to the date of the student's graduation or the conclusion of the school year in which he or she exceeds the age of eligibility. The summary shall include recommendations to assist the child in meeting his or her postsecondary goals.

(c) If a student attends a school other than that of the school district of residence which is empowered to grant a diploma, the student shall have the choice of receiving the diploma of the school attended or the diploma of the school district of residence.

1. If the school the student is attending declines to issue a diploma to the student, the district of residence board of education shall issue the student a diploma if the student has satisfied all State and local graduation requirements, as specified in the student's IEP.

(d) If a district board of education grants an elementary school diploma, a student with a disability who fulfills the requirements of his or her IEP shall qualify for and receive a diploma.

(e) Students with disabilities who meet the standards for graduation according to this section shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

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

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

Amended (a); added a new (b); and recodified former (b) through (d) as (c) through (e).

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

In (a), updated N.J.A.C. reference.

Recodified from N.J.A.C. 6A:14-4.12 and 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) and (b)3, updated N.J.A.C. references; added (b)4 and (c)1; in (d), inserted "and receive". Former N.J.A.C. 6A:14-4.11, Statewide assessment, recodified to N.J.A.C. 6A:14-4.10.

#### Case Notes

ALJ concluded that the opinions offered by petitioner's experts were unsupported by credible evidence and that petitioner failed to establish that the school board improperly awarded him a high school diploma. B.C. v. River Dell Reg'l High School Dist. Bd. of Educ., OAL Dkt. No. EDS 1245-07, 2008 N.J. AGEN LEXIS 346, Final Decision (May 29, 2008).

School district was not required to fund additional full year at out-of-district school for special education student who could meet school district's graduation requirements by attending summer school. T.R. v. Mt. Olive Board of Education, 96 N.J.A.R.2d (EDS) 293.

Emergency relief request to allow classified student, who had been barred from graduation ceremonies for assaulting teacher, to participate in those ceremonies was denied. C.T. v. Clifton Board of Education, 96 N.J.A.R.2d (EDS) 212.

Emergency relief request to allow student with excessive absences to participate in graduation ceremonies was denied. M.P. v. Hackettstown Board of Education, 96 N.J.A.R.2d (EDS) 210.

Special education student not receiving diploma would be allowed to participate in graduation ceremonies where individualized education plan specifically provided for participation. K.M. v. Northern Valley Regional High School District and Ridgewood Board of Education, 96 N.J.A.R.2d (EDS) 197.

Special education student was properly denied graduation and senior privileges due to her poor attendance and failure to earn required number of academic credits. A.S. v. Wayne Board of Education, 96 N.J.A.R.2d (EDS) 162.

#### 6A:14-4.12 (Reserved)

Recodified to N.J.A.C. 6A:14-4.11 and amended by R.2006 d.315, effective September 5, 2006.

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

Section was "Graduation".

## SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

### 6A:14-5.1 General requirements

(a) Each district board of education, independently or through joint agreements, shall employ or contract with child study teams as set forth in N.J.A.C. 6A:14-3.1(b), speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

1. Joint agreements for child study team services may be entered into with local education agencies including other local school districts, educational services commissions, jointure commissions and county special services school districts.

2. A district board of education may supplement child study team services with additional teams through contracts or joint agreements.

3. If a vacancy occurs on a child study team(s) because of an absence of a member or members of the team(s) for an identified period of time, the district may, for the duration of any such vacancy, contract with a clinic or agency, an individual or another district board of education for those services that were provided by the absent team member(s).

(b) When a district board of education provides its educational program through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a sending-receiving relationship pursuant to N.J.S.A. 18A:38-1 et seq., when all the students of one or more grades of a district board of education attend school(s) operated by other district boards of education, the receiving district board of education shall be responsible for determining the eligibility of those students and developing and implementing their IEPs.

2. When individual students are placed by a district board of education in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to students with disabilities.

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services to provide counseling or mental health services. For the related services listed in (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved or licensed by the Department of Human Services or by the Department of Health and Senior Services to provide counseling or mental health services. All instructional, child study team and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline under which they are providing services, provide services under this subsection if certified through the emergency certification process.

1. For public school students:

i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5;

ii. Child study team services to supplement existing local district services;

iii. Related services;

(1) Certified occupational therapy assistants and others employed in a supportive role to licensed and, where applicable, certified providers of related services, shall work under the supervision of an appropriately licensed and, where applicable, certified provider of such services.

(2) Physical therapy assistants shall work in the presence and under the supervision of a certified physical therapist.

(3) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a bachelors degree in education, psychology or a related field from an accredited institute of higher education and shall work under the supervision of certified district board of education personnel.

iv. Home instruction; and

v. Speech-language services provided by a speech-language specialist when a district or private school for students with disabilities is unable to hire sufficient staff to provide the service.

2. For students attending nonpublic schools, the district in which the facility is located may contract for the following services:

i. Evaluation, determination of eligibility, classification and the development of a service plan;

ii. Supplementary instruction, speech-language services and home instruction for students determined eligible for such services; and

iii. English as a second language according to N.J.A.C. 6A:15 and compensatory education according to N.J.S.A. 18A:46A-2e for students eligible for such services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from Department of Education approved clinics and agencies with prior written notice to the Department of Education through its county office according to the following:

1. Notice of the intent to purchase services shall include the proposed terms of the contract;

2. The notice shall be effective for one year; and

3. Districts are not required to provide prior notice to the Department of Education when contracting for an independent child study team evaluation in accordance with N.J.A.C. 6A:14-2.5.

(e) District boards of education may contract for medical diagnostic services with medical clinics and agencies approved by another New Jersey State agency or appropriate state agencies outside of New Jersey.

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), added a second sentence in the introductory paragraph.

Amended by R.2000 d.358, effective September 5, 2000.

See: 32 N.J.R. 1712(a), 32 N.J.R. 3332(b).

In (c)2iii, updated N.J.A.C. reference.

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

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

Rewrote (c).

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

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

Rewrote the section.

#### Case Notes

Under N.J.S.A. 18A:36A-11(b), the school district of residence is not responsible for the costs of home instruction for disabled charter school students, as opposed to private day or residential school placement; clear statutory and regulatory distinctions exist between "home instruction," which may be provided for through contracts with "private clinics and agencies," N.J.A.C. 6A:14-5.1(c)1iv, and "private schools for the disabled." *Golden Door Charter School v. State-Operated School Dist. of Jersey City*, OAL Dkt. No. EDU 1169-06, 2007 N.J. AGEN LEXIS 302,

Commissioner's Decision (March 15, 2007), aff'd, SB No. 10-07, 2007 N.J. AGEN LEXIS 887 (N.J. State Bd. of Educ. August 1, 2007), aff'd per curiam, 2008 N.J. Super. LEXIS 129 (App.Div. 2008).

Initial Decision (2006 N.J. AGEN LEXIS 1006) adopted, which concluded that a board of education's action abolishing petitioner's position of school social worker and contracting with a jointure commission for the provision of all its child study team services was proper under N.J.S.A. 18A:46-5.1, N.J.A.C. 6A:14-5.1, and existing case law; in addition, the ALJ found that petitioner failed to present any credible evidence that reasons of economy were merely a pretext for the board's action. *Asaro v. Bd. of Educ. of Moonachie*, OAL Dkt. No. EDU 9309-99, Commissioner's Decision (December 22, 2006).

Student with multiple disabilities required extra year of special education due to chronic absenteeism. *G.K. v. Roselle Borough*, 95 N.J.A.R.2d (EDS) 86.

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

### 6A:14-5.2 Approval procedures for clinics or agencies

(a) For the purposes of approval by the Department of Education, a clinic or agency shall consist of three or more professionals. Initial approval of a clinic or agency shall require, but not be limited to, submission and evaluation of the following:

1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county, or municipality where the clinic or agency provides its services shall be provided;
2. A description of the scope and nature of services to be offered;

Disabilities Education Act (IDEA), federal regulations, or state special education laws. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Requirements of regulations under Individuals with Disabilities Act (IDEA) that each state have on file with Secretary of Education description of how "child find" policies and procedures will be monitored to ensure that the state educational agency (SEA) obtained information on number of children identified within each category of disability, information adequate to evaluate effectiveness of those policies and procedures, and description of method used by state to determine which children were receiving special education and related services were not met by state regulations merely mandating that each school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations which failed to include portions of the Individuals with Disabilities Education Act (IDEA) or its regulations setting forth filing requirements in connection with "child find" requirements were impermissibly inconsistent with federal standard, despite state's contention that filing requirements applied only to state and not to local school districts, where result of failure to incorporate federal standard in regulations was lack of public awareness of applicable standards and how standards were applied. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Necessity of electric shock treatment for developmentally disabled child established by clear and convincing evidence; other treatments had proven ineffective, child had caused much injury to herself, electric shock treatment through Self-Injurious Behavior Inhibiting System had decreased child's self-injurious behavior, risks inherent in use of SIBIS were low, and benefits outweighed risks. In re *J.M.*, 292 N.J.Super. 225, 678 A.2d 751 (Ch.1996).

Local educational agency where the private school is located is responsible for providing the student with special educational services, not the district where the parents are domiciled; therefore, while a student was enrolled in a school in Connecticut, the school district in New Jersey had no responsibility to provide her with special services under Individuals with Disabilities Education Act. *R.J. ex rel. R.J. v. Milburn Twp. Bd. of Educ.*, OAL Dkt. No. EDS 11838-07, 2009 N.J. AGEN LEXIS 124, Final Decision (February 4, 2009).

District where nonpublic school was located would be responsible for providing Chapter 192-193 services to students attending that school. *Board of Education of the City of Clifton v. State-operated School District of the City of Paterson*, 96 N.J.A.R.2d (EDU) 811.

Reimbursement request for costs of special education student's private school placement was denied where testimony of student's former teacher indicated that in-district placement conferred educational benefit. *E.S.G. v. Collingswood Board of Education*, 96 N.J.A.R.2d (EDS) 213.

Reimbursement for out-of-district placement was denied where child study team found in-district placement to be appropriate. *C.G. v. Oakland Board of Education*, 96 N.J.A.R.2d (EDS) 199.

Student with learning disabilities was entitled to continuing placement in private school subsidized by local board of education during pendency of due process hearing. *K.G. v. Haddonfield Board of Education*, 96 N.J.A.R.2d (EDS) 103.

Reimbursement for private school costs denied when classified student's placement at public school would have afforded him opportunity to receive free and appropriate public education. *R.W. v. Montgomery Township Board of Education*, 96 N.J.A.R.2d (EDS) 78.

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

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

Difficulties in auditory processing and visual perception of neurologically impaired child with Tourette's syndrome demonstrated acute need for placement in private school. *E.J. v. Mansfield Board*, 95 N.J.A.R.2d (EDS) 235.

Placement in class for neurologically impaired students at local school, rather than private school placement, was appropriate placement for classified student making cognitive and academic progress. *J.J. v. Bound Brook Board*, 95 N.J.A.R.2d (EDS) 230.

Educational placement out of district was appropriate for perceptually impaired student's educational needs despite parent's noncooperation. *P.M. v. Brick Township Board*, 95 N.J.A.R.2d (EDS) 201.

School district was required to provide reimbursement for occupational therapy given neurologically impaired child to replace that which she should have received while domiciled in school district. *G.K. v. Cherry Hill Board*, 95 N.J.A.R.2d (EDS) 197.

Residential placement for multiply handicapped child with various diagnosed disorders ranging from loving to potentially injurious was only appropriate placement in least restrictive environment. *Z.D. v. Fort Lee Board v. 95 N.J.A.R.2d (EDS) 193.*

School district was required to pay for specialized educational program of domiciled child obliged to seek school with program outside district. *J.D. and K.D. v. Middletown Board of Education*, 95 N.J.A.R.2d (EDU) 154.

Tuition and transportation costs for out-of-district placement were reimbursable. *J.B. v. Hamilton Township*, 95 N.J.A.R.2d (EDS) 64.

Board liable for tuition and costs related to handicapped student's placement in private school. *J.E. v. Montgomery Township Board of Education*, 94 N.J.A.R.2d (EDS) 191.

Parents entitled to reimbursement for educationally disabled student's placement at private school. *M.P. v. Summit Board of Education*, 94 N.J.A.R.2d (EDS) 156.

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.

Costs for disabled child's out-of-state placement were shared by school districts in which divorced parents with joint custody were domiciled. *J.K. v. West Milford and Roxbury*, 93 N.J.A.R.2d (EDS) 145.

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

Full cost, rather than costs on a pro-rata basis, was amount parents were to be reimbursed for private school tuition. *M.Y., a Minor Child v. Fair Lawn*, 93 N.J.A.R.2d (EDS) 91.

Education requirements of special school must be complied with when parents seek placement of emotionally disturbed son. *J.T., a Minor Child v. Barnegat Township*, 93 N.J.A.R.2d (EDS) 89.

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.

Blind, multiply handicapped child with behavioral problems was shown to need 12-month residential placement. *L.P. v. Edison Board of Education*, 92 N.J.A.R.2d (EDS) 259.

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

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

Parents not entitled to reimbursement for cost of sending fifth-grade student to private school. M.R. v. Montville Board of Education, 92 N.J.A.R.2d (EDS) 20.

Private schools required approval by Bureau of Special Education and Pupil Personnel under former N.J.A.C. 6:28-4.2. A.N. v. Clark Bd. of Ed., 5 N.J.A.R. 152 (1983).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation. Atty.Gen.F.O.1981, No. 1.

**6A:14-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

(a) The board of education of the district in which the nonpublic school is located shall provide to nonpublic school students the programs and services required by this subchapter by itself, or through joint agreements with other boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6A:14-5.

(b) Specifications for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.

(c) Identification, evaluation, determination of eligibility, development of service plans and the provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

(d) English as a second language shall be provided according to N.J.S.A. 18A:46A-2c.

(e) Compensatory education shall be provided according to N.J.S.A. 18A:46A-2e.

(f) All special education programs and services required by this subchapter shall be provided with parental consent in accordance with N.J.A.C. 6A:14-2.3.

(g) Those procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.

1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools.

i. For the services provided, the service plan for a student with a disability enrolled in a nonpublic school shall include the components described in N.J.A.C. 6A:14-3.7(e)1 through 6, (e)8 and (e)14 through 16.

2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall

be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.

(h) Personnel providing a program or service under this subchapter shall be highly qualified and shall meet appropriate certification and if required, licensing requirements. Personnel shall not be employed by the nonpublic school in which the student is enrolled with the exception of personnel providing the types of instruction specified in N.J.A.C. 6A:14-5.1(c)2ii and iii.

(i) Programs and services for nonpublic school students shall be provided in facilities approved by the Department of Education through its county superintendent of schools according to N.J.S.A. 18A:46-5 and 18A:46-19.5.

(j) Public and nonpublic school students may be grouped for speech correction and the other instructional programs provided under this subchapter, when appropriate.

(k) When the provision of programs and/or services under this subchapter requires transportation or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall provide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter.

(l) The board of education of the district in which the nonpublic school is located shall maintain all records of nonpublic school students receiving programs and/or services under this subchapter according to N.J.A.C. 6A:32.

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), substituted a reference to service plans for a reference to individualized education programs; and in (g), added 1 and 2.

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

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

In (g)1i, updated N.J.A.C. references; in (h), inserted "be highly qualified and shall"; in (l), updated the N.J.A.C. reference.

**6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.**

(a) Each board of education of the district in which the nonpublic school is located shall provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds.

(b) Each board of education of the district in which the nonpublic school is located shall maintain an accounting system for nonpublic programs and services according to N.J.A.C. 6A:23.

(c) At the close of each school year, the board of education shall report to the Department of Education the total district cost for programs and services provided under this subchapter.

(d) Each board of education of the district in which the nonpublic school is located shall receive State aid for programs and services required by this subchapter for the succeeding school year as available from appropriated funds for nonpublic school programs and services.

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

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

In (b), amended NJAC reference.

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

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

In (b), substituted "6A:23" for "6A:23-2".

#### Case Notes

Teacher did not accrue secondary seniority credits by providing statutorily mandated services in public school to parochial students. *Cohen v. Emerson Bd. of Educ.*, 225 N.J.Super. 324, 542 A.2d 489 (A.D.1988).

The Essex County educational services commission acted beyond the scope of its authority when it contracted with a private, profit-making corporation for the provision of auxiliary, diagnostic and therapeutic services to non-public school pupils, without seeking the review and approval of the State Board or the Commissioner. *Atty.Gen.F.O.1981, No. 1.*

Chapter 193 (N.J.S.A. 18A:46-19.1 et seq.) funds may be used for administrative costs. Indeed, funding for administrative costs must come from Chapter 193 funds; public school and educational services entities may not subsidize the costs of nonpublic programs by diverting funds for or from other public educational programs (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

Statutes governing educational services commissions and the interpretative case law provide for collection of all costs with respect to the provision of remedial and auxiliary services to school districts (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

Department of Education's denial of reimbursement of administrative expenses out of Chapter 193 funds, after permitting, whether consciously or by inaction, such payments for approximately 25 years, constituted an administrative rule that should have been promulgated pursuant to the Administrative Procedures Act (adopting 2005 N.J. AGEN LEXIS 390). *Monmouth-Ocean Educ. Services Comm'n v. N.J. State Dep't of Educ.*, OAL Dkt. No. EDU 8786-04, 2005 N.J. AGEN LEXIS 1293, Commissioner's Decision (October 21, 2005).

#### 6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

(a) Annually, the board of education shall submit to the Department of Education a report describing the programs and services provided under this subchapter.

(b) The end of the year report shall include the numbers of nonpublic school students provided each program or service and such other information as may be required by the Department of Education.

#### Case Notes

Requirements of regulations under Individuals with Disabilities Act (IDEA) that each state have on file with Secretary of Education description of how "child find" policies and procedures will be monitored to ensure that the state educational agency (SEA) obtained information on number of children identified within each category of disability, information adequate to evaluate effectiveness of those policies and procedures, and description of method used by state to determine which children were receiving special education and related services were not met by state regulations merely mandating that each school district develop written procedures. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations which failed to include portions of the Individuals with Disabilities Education Act (IDEA) or its regulations setting forth filing requirements in connection with "child find" requirements were impermissibly inconsistent with federal standard, despite state's contention that filing requirements applied only to state and not to local school districts, where result of failure to incorporate federal standard in regulations was lack of public awareness of applicable standards and how standards were applied. *Baer v. Klagholz*, 771 A.2d 603 (2001).

#### 6A:14-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of students with disabilities

(a) According to N.J.S.A. 18A:46-14, school age students with disabilities may be placed in accredited nonpublic schools which are not specifically approved for the education of students with disabilities with the consent of the Commissioner of Education, by an order of a court of competent jurisdiction, or by order of an administrative law judge as a result of a due process hearing. Preschool age students with disabilities may be placed by the district board of education in early childhood programs operated by agencies other than a district board of education according N.J.A.C. 6A:14-4.3(d) or by an administrative law judge as a result of a due process hearing.

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1. The nonpublic school is accredited. Accreditation means the on-going, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency which is based upon written evaluation criteria that address educational programs and services, school facilities and school staff;

2. A suitable special education program pursuant to N.J.S.A. 18A:46-14a through h cannot be provided to this student;

3. The most appropriate placement for this student is this nonpublic school;

4. The program to be provided shall meet the requirements of the student's individualized education program;

5. The student shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c through g. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Statewide assessment and graduation requirements shall apply. Participation in Statewide assessment and/or exemptions from graduation requirements shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.7(e)7 and 9.

i. All personnel providing either special education programs according to N.J.A.C. 6A:14-4.4 through 4.7, or related services according to N.J.A.C. 6A:14-3.9 shall hold the appropriate educational certificate and license, if one is required, for the position in which they function;

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting authority;

iii. All substitute teachers and aides providing special education and related services shall be employed according to applicable rules at N.J.A.C. 6A:9-6.5, N.J.A.C. 6A:32-4.7 and this chapter;

6. The student shall receive a comparable program to that required to be provided by the local district board of education according to N.J.S.A. 18A:35-1, 2, 3, 5, 7 and 8, 18A:40A-1, 18A:6-2 and 3, 18A:58-16, N.J.A.C. 6A:8-3.1, and N.J.A.C. 6A:14-1 through 4. These requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Exemptions shall be recorded in the student's IEP according to N.J.A.C. 6A:14-3.7(e)7 and 9;

7. The nonpublic school provides services which are nonsectarian;

8. The nonpublic school complies with all relevant State and Federal antidiscrimination statutes;

9. Written notice has been provided to the student's parent regarding this placement which has included a statement that:

i. The nonpublic school is not an approved private school for students with disabilities and that the local school district assumes the ongoing monitoring responsibilities for the student's program;

ii. No suitable special education program could be provided to this student pursuant to N.J.S.A. 18A:46-14; and

iii. This is the most appropriate placement available to this student;

10. The placement is not contested by the parents; and

11. The nonpublic school has been provided copies of N.J.A.C. 6A:14, 1:6A and 6A:32.

(c) In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the administrative law judge assigned to the case when:

1. The administrative law judge makes a factual determination that the certifications in (b) above are met; or

2. The district board of education and the parent agree to a settlement of the matter which would include placement under N.J.S.A. 18A:46-14 and the administrative law judge approves the settlement. Approval may be granted if the district board of education makes the certifications in (b) above. A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through the county office.

(d) The district board of education shall be responsible to monitor the student's placement at least annually to ensure the program's compliance with the certifications.

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 "of Education" following "Commissioner"; and added references to placement of students by order of an administrative law judge as a result of a hearing.

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

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

Section was "Placement in accredited nonpublic schools which are not specifically approved for the education of disabled students". In (a), substituted "students with disabilities" for "disabled students" following "education of" and substituted "(d)" for "(c)"; in the introductory paragraph of (b)5 and (b)6, substituted "(e)7 and 9" for "(d)5 and 7"; in (b)5i, substituted "3.9" for "3.8"; rewrote (b)5iii; in (b)9i, substituted "students with disabilities" for "the disabled"; and in (b)11, substituted "6A:32" for "6:3-6".

#### 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.

Placement of a nine-year-old student diagnosed with having ADHD, sensory integration disorder, cluttering, abnormal auditory perception, and dyspraxia in an accredited nonpublic school which was not specifically approved for the education of students with disabilities would have provided the student with a FAPE where the school had strong language based instruction suited to the student's lack of focus and distractibility and also offered an array of services geared toward developing comprehensive social skills and addressing his cluttering issue. R.S. ex rel. R.S. v. Shrewsbury Borough Bd. of Educ., OAL Dkt. No. EDS 297-10 and EDS 366-10 (Consolidated), 2010 N.J. AGEN LEXIS 414, Final Decision (August 17, 2010).

Parents' request for placement of their five-year-old language delayed child in a sectarian private school failed because New Jersey law prohibits local school districts from arranging for placement of students with handicaps in religious schools. There was a distinction between placement by the school district itself, which was subject to all pertinent state standards, and unilateral placement by a parent, which need not comply with all state standards so long as such placement was deemed appropriate and, since the case did not involve a claim for reimbursement of the costs of a unilateral placement by the parents, the state standards governing special education, including the bar against payment to sectarian schools, fully applied. J.C. ex rel. C.C. v. Passaic City Bd. of Educ., OAL DKT. EDS 7644-06, 2006 N.J. AGEN LEXIS 807, Final Decision (September 18, 2006).

Even if parents had succeeded in showing that their son had not received FAPE at his old high school, their choice of alternative placement for their son was not appropriate because it was an out-of-state boarding school not approved by the New Jersey Department of Education as a special education school and was staffed predominantly by teachers not certified to teach high school, much less special education; additionally, the very things the parents complained were not being provided to their son at the original high school were not provided at the boarding school. J.A. ex rel. J.A. v. Mountain Lakes Bd. of Educ., OAL Dkt. No. EDS 9732-04, 2005 N.J. AGEN LEXIS 559, Final Decision (September 27, 2005).

Continued placement of perceptually impaired student in otherwise appropriate private school was required until program in public school provided some educational benefit. K.G., A Minor v. Haddonfield Board, 95 N.J.A.R.2d (EDS) 167.

Free and appropriate education in public school precluded tuition and transportation for non-approved private school. A.S. v. Hasbrouck Heights, 95 N.J.A.R.2d (EDS) 162.

Present public school environment was more appropriate for neurologically impaired child than out-of-district placement. A.H. v. Hamburg Board, 95 N.J.A.R.2d (EDS) 52.

Handicapped student could not be placed in school not able to provide student with appropriate educational services. B.G. v. Manasquan Public School System, 95 N.J.A.R.2d (EDS) 22.

Placement of neurologically impaired student in non-public school was not appropriate absent required certification. B.G. v. Manasquan, 95 N.J.A.R.2d (EDS) 22.

Reimbursement of parents for tuition paid for handicapped student's placement in nonapproved private school was justified. C.D. v. Wanaque, 93 N.J.A.R.2d (EDS) 154.

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.

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.

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

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

Parents not entitled to reimbursement of tuition expenses for unilateral placement of child in private school. K.S. v. East Brunswick Board of Education, 92 N.J.A.R.2d (EDS) 159.

Parents not entitled either to placement of child at nonapproved private school nor to reimbursement of tuition. M.H. v. Union Township Board of Education, 92 N.J.A.R.2d (EDS) 132.

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

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

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.

#### Law Review and Journal Commentaries

Out-Of-District Placement for the Special Needs Child. Michaelene Loughlin, Sherry Chachkin, 222 N.J.L.J. 43 (2003).

## SUBCHAPTER 7. RECEIVING SCHOOLS

### 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:14-7.1 General requirements

(a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services) and public college operated programs for students with disabilities. Receiving schools shall obtain prior written approval from the Department of Education to provide programs for students with disabilities through contracts with district boards of education.

1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education in this subchapter.

2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.

(b) For a student in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.

(c) Programs for students with disabilities provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding age range and class size shall be requested by the district of residence board of education and determined pursuant to N.J.A.C. 6A:14-4.9. District boards of education and providers of programs under this subchapter shall maintain documentation of this approval.

(d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.

(e) Annually, providers of programs pursuant to this subchapter shall prepare and submit a report, in a format provided by the Department of Education, to the Department of Education through the county office. The report shall include, but not be limited to, the number of enrolled students by age, race, ethnicity, and additionally, the number of students whose placements were terminated during the previous school year, and, when known, the subsequent placement for each student whose placement was terminated.

(f) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey students.

(g) The residential component of an approved private school for students with disabilities shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the State in which the school is located.

(h) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in or shall not be employed by any approved private school for students with disabilities which serves students with disabilities placed by that district board of education.

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

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

Rewrote (c); added new (e) and recodified former (e) through (g) as new (f) through (h); throughout the section, substituted "students with disabilities" for "the disabled".

### Case Notes

Authority to contract for speech therapy services. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

School board could terminate tenured speech correction teacher and have services provided by educational services commission. *Impey v. Board of Educ. of Borough of Shrewsbury*, 273 N.J.Super. 429, 642 A.2d 419 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 142 N.J. 388, 662 A.2d 960.

Department's revocation of a school's status as an approved private school for the disabled was proper where the parties' settlement agreement provided that the school had until March 31, 2008, to comply with the regulatory requirement for an average daily enrollment of 24 public school placement students and the school did not meet the requirement; the agreement was entered into freely by both parties after conferring before the ALJ, the terms of the settlement were clear, and there was no evidence that the Department entered into the agreement in bad faith (adopting with modification 2009 N.J. AGEN LEXIS 326). *Kentwood Academy v. Davy (On Remand)*, OAL Dkt. No. EDU 7165-08, 2009 N.J. AGEN LEXIS 638, Final Decision (July 27, 2009).

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. AGEN LEXIS 930, Final Decision (December 1, 2005).

Public school unable to compel private school to re-admit expelled student. *H.F. v. Pemberton Township Board of Education*, 97 N.J.A.R.2d (EDS) 101.

**6A:14-7.2 Approval procedures to establish a new receiving school**

(a) Prior to the establishment of a receiving school for students with disabilities, an application shall be submitted to the Department of Education according to the following schedule:

1. The applicant shall submit a description of the program and services to be offered which shall include, but not be limited to:

- i. The educational philosophy of the program;
- ii. Characteristics of the program, which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session;
- iii. The curriculum and materials including a description of how the core curriculum content standards will be implemented;
- iv. A mechanism for evaluating student progress and program efficacy; and
- v. The organizational structure, including projected number of personnel by title, job function and personnel requirements, including certification;

2. A survey of need indicating the number, age range, types of students with disabilities to be served by the proposed programs/services and the reasons these students cannot be served in the resident district, supported by documentation from local public school districts. Documentation of local school districts surveyed shall be included. The Department of Education shall determine if the program to be provided by the receiving school is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the needs assessment.

i. Any appeal of a decision to deny approval may be made to the Commissioner of Education in accordance with N.J.A.C. 6A:3;

3. Additionally, each approved private school for students with disabilities shall submit:

i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, The Individuals with Disabilities Education Act (20 U.S.C. §§1400 et seq.) and the Rehabilitation Act of 1973 (U.S.P.L. 93-112 Section 504, 29 U.S.C. §794a);

ii. The administrative policies and procedures of the school;

iii. An assurance that necessary emergency procedures will be followed;

iv. A copy of the approval of the facility by the issuing agency, including a certificate of occupancy and certification of health and fire approval;

v. A copy of the certificate of incorporation;

vi. Staffing information which shall include a list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required, the function he or she will perform, and that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual; and

vii. A projected budget in accordance with N.J.A.C. 6A:23-4.

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

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

In (a)2, changed N.J.A.C. reference.

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

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

Rewrote the section.

**Case Notes**

Exception would not be made for applicant seeking approval for a private school for the disabled, where certain potential student referrals were not received by the Office of Special Education Programs (OSEP) until after the Office had notified the applicant that its application was eight short of the minimum requisite number, necessitating rejection; to compel the OSEP to accord such preferential treatment to one applicant over others would serve to compromise the integrity of the whole application process. *Y.E.S. Academy v. N.J. State Dep't of Educ.*, Office of Special Educ. Programs, OAL Dkt. No. EDU 4665-07, Commissioner's Decision (August 15, 2007).

**6A:14-7.3 Amendment procedures for receiving schools**

(a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided or the location of its facilities by obtaining prior written approval from the Department of Education through its county offices of education.

1. To amend the policies, procedures, nature and scope of the services provided, or increase or decrease the services provided, the approved receiving school shall submit the following:

i. A copy of the revised policy and/or procedure;

ii. A revised description of the scope and nature of the services to be offered according to N.J.A.C. 6A:14-7.2(a)3iii(4); and

iii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual and the function he or she shall perform.

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

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

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

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

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

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

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

#### Case Notes

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

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

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

#### 6A:14-7.8 Fiscal management

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

(b) The district board of education shall establish a written contract for each student with a disability it places in a

program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the student with a disability. For students placed in an approved private school for students with disabilities, the district board of education shall use the mandated tuition contract according to N.J.A.C. 6A:23.

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

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

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

Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

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

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

#### 6A:14-7.9 Records

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

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

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

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

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

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

In (a)3, added "or his or her designee" at the end.  
Amended by R.2003 d.387, effective October 6, 2003.  
See: 35 N.J.R. 1991(a), 35 N.J.R. 4714(c).

In (a)3, amended NJAC reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

## SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS OF CORRECTIONS AND HUMAN SERVICES, AND THE JUVENILE JUSTICE COMMISSION

### 6A:14-8.1 General requirements

(a) Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6A:17-3 and the requirements of this chapter.

(b) Each State agency operating approved programs shall develop a special education plan according to N.J.A.C. 6A:14-1.2 which additionally shall include:

1. A list of all State and Federal funding sources; and
2. A separate educational budget statement for each State facility.

(c) All students with disabilities shall receive an educational program and related services based on an IEP. A student who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the IEP incorporated into the plan.

(d) The length of the school day for all special education programs under this subchapter with the exception of home instruction shall be at least as long as that established for nondisabled students. Educational programs shall operate at least 220 days each year.

(e) Each district board of education shall provide mandated student records according to N.J.A.C. 6A:32 to programs operated by a New Jersey State agency when a student is placed in a State facility. The parent shall receive notification of the release of these records to the facility. Permitted records according to N.J.A.C. 6A:32 shall be released only with consent.

(f) For a student in residence in a State facility, the responsible district board of education shall maintain the educational records sent by the State facility according to N.J.A.C. 6A:32.

(g) For a student in residence in a State facility, the responsible district board of education shall facilitate the entry of the student into the local district program, as appropriate.

(h) When a student is placed in a State facility by a public agency other than the district board of education, the State shall provide a program according to the following:

1. If the student is a student with a disability, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current individualized education program.

2. If the student is not currently classified as a student with a disability, or if the State facility does not have current school records, within 30 calendar days the State facility shall review the student's educational status and determine if referral to the child study team is required.

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

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

In (e), deleted a reference to adult student.

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

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

In (a), amended NJAC reference.

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

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

In (e) and (f), substituted "6A:32" for "6:3-6"; in (h)1 and (h)2, substituted "a student with a disability" for "disabled".

#### Case Notes

N.J.A.C. 6:28-8.1(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272 (App.Div.1985).

Approved in-state school and not out-of-state school was appropriate placement for 20-year-old autistic student. J.R. v. Department of Human Services, 93 N.J.A.R.2d (EDS) 12.

#### 6A:14-8.2 Procedural safeguards

(a) Mediation shall be available for a student in a State facility according to N.J.A.C. 6A:14-2.6.

(b) A request for a due process hearing for a student in a State facility shall be made to the Department of Education according to N.J.A.C. 6A:14-2.7.

(c) Discipline of students with a disability shall be according to N.J.A.C. 6A:14-2.8.

(d) Surrogate parents shall be appointed according to N.J.A.C. 6A:14-2.2.

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

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

In (c), substituted "students with a disability" for "disabled students".

#### 6A:14-8.3 Provision of programs

(a) A residential State facility may recommend placement of a student with a disability in a local school district. Documentation of attempts to place the student in the least restrictive environment according to N.J.A.C. 6A:14-4 shall be stated in the student's IEP. Tuition shall be paid by the State facility to the local board of education where the student is placed.

(b) All personnel providing special education programs, related services, or multi-disciplinary team services shall hold the appropriate educational certificate and, if required, a license for the position in which they function.

(c) Day school programs operated by the Department of Human Services shall be provided in the following manner:

1. The Department of Human Services shall provide educational programs and related services for students with disabilities in State-operated or contracted facilities;

2. The district board of education shall be responsible for providing the services according to N.J.A.C. 6A:14-3.3 through 3.8. The day school program is responsible for implementing the IEP developed by the district board of education; and

3. The district board of education shall be responsible to monitor the student's placement at least annually to ensure the implementation of the IEP.

(d) An educational program for students with disabilities in a State residential facility shall be commensurate with those in a day school program.

(e) For students placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6A:14-2.3(k).

(f) When a student in a State facility is in need of home instruction according to N.J.A.C. 6A:16-10.1, the State facility shall implement the home instruction program.

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

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

In (a), substituted "4" for "4.2"; rewrote (b); in (e), substituted "(k)" for "(i)"; in (f), substituted "6A:16-10.1" for "6A:14-4.9".

#### Case Notes

N.J.A.C. 6:28-8.3(d) upheld as statutorily consistent. In re: Repeal of N.J.A.C. 6:28, 204 N.J. Super. 158, 497 A.2d 1272 (App.Div.1985).

### SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

#### 6A:14-9.1 Monitoring and corrective action

(a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey statutes, the New Jersey Administrative Code, the approved special education plan and Federal requirements under the Individuals with Disabilities Education Act (IDEA).

1. The monitoring process shall include, but is not limited to, review of:

- i. Provision of a free, appropriate public education in the least restrictive environment;
- ii. Provision of transition services; and
- iii. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent such representation is the result of inappropriate identification.

(b) The monitoring procedures may include, but are not limited to:

1. A self-assessment conducted by the program being monitored;

2. Review of data, reports and student records;
3. On-site visits;
4. Comparison of a sample of individualized education programs with the programs and services provided;
5. Development of an improvement plan by the program being monitored to address areas of noncompliance identified during the self-assessment; and
6. Audit of Federal and State funds.

(c) After the monitoring process is completed, a report shall be written and sent to the public or private agency.

(d) If the public or private agency receives a final report that indicates noncompliance in addition to any areas of need identified through self-assessment, revisions to the improvement plan shall be developed by the agency and submitted to the Department of Education for approval.

(e) The improvement plan shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed; and
2. The dates by which noncompliance will be corrected.

(f) The Department of Education shall review the improvement plan and notify the agency if it is acceptable.

(g) When an improvement plan is not submitted, found unacceptable or not implemented, the Department of Education shall notify the agency of the actions that it intends to take.

(h) An appeal of the denial of approval of an improvement plan, imposition of sanctions or determination of noncompliance may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

(i) The Department of Education shall maintain monitoring records for a period of at least five years.

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

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

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

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

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

In (a), added a reference to Federal requirements under IDEA.

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

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

Rewrote the section.

#### Case Notes

Final investigation decision rendered by the Office of Special Education Programs, pursuant to the Individuals with Disabilities Education Act, cannot be appealed to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

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

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ., OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

#### 6A:14-9.2 Complaint investigation

(a) The State Director of the Office of Special Education Programs or designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint regarding the provision of special education and related services covered under this chapter.

(b) An organization or individual may request a complaint investigation by simultaneously submitting a written signed request to the State Director of the Office of Special Education Programs and to the educational agency against which the complaint is directed. The complaint shall include:

1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
2. The facts on which the statement is based; and
3. The time period when the alleged violation occurred.
  - i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received.

(c) The Office of Special Education Programs shall, if deemed necessary, complete an investigation within 60 calendar days after receipt of the written signed complaint and issue a report setting forth a final decision with respect to the complaint, unless the time period is extended according to (c)6 below.

1. If a party believes that a final decision includes an error that is material to the determination in the decision, the party may inform the Office of Special Education Programs and the other party in writing, within 15 days of the

date of the report. The letter shall identify the asserted error and include any documentation to support the claim. The Office of Special Education Programs will determine the appropriate steps to consider the claim of error after receipt of the letter.

2. The investigation may include, but not be limited to:

- i. Review of policies and procedures;
- ii. Review of student record(s);
- iii. Observation of programs;
- iv. Interview(s);
- v. An on-site investigation if determined necessary; and

vi. If the parent consents, an opportunity for the education agency to engage the parent in mediation or an alternative means of dispute resolution.

3. The complainant shall be given the opportunity to provide additional information, either orally or in writing about the allegations in the complaint.

4. The education agency against which the complaint is directed shall be provided an opportunity to respond to the complaint and, at the discretion of the Director of the Office of Special Education Programs or a designee, may be afforded an opportunity to resolve the issues in the complaint prior to issuance of an investigation report.

5. The State Director of the Office of Special Education Programs may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint or if the parent and education agency agree to mediate the dispute or engage in another means of dispute resolution.

(d) If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Office of Special Education Programs shall set aside the entire complaint until the conclusion of the hearing.

1. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and the Office of Special Education Programs shall inform the complainant to that effect.

(e) A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to all parties within 60 calendar days after receipt of the written signed complaint unless the 60-day time period is extended in accordance with (c)6 above.

(f) If the education agency is found to be in noncompliance, a corrective action plan in accordance with the directive in the report shall be developed and submitted to the Office of Special Education Programs.

(g) The corrective action plan shall include, but not be limited to:

1. Objectives, strategies and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and

2. The dates by which the noncompliance will be corrected.

(h) The State Director of the Office of Special Education Programs shall review the corrective action plan and notify the education agency if it is acceptable.

(i) The Office of Special Education Programs shall review and verify the implementation of the corrective action plan.

(j) When a corrective action plan is not submitted, is unacceptable or is not implemented, the Office of Special Education Programs shall notify the agency of the actions it intends to take.

(k) Nothing in this section shall be construed as limiting the right of parents or adult students to seek a due process hearing with regard to issues raised in a request for complaint investigation. If a due process hearing is sought while a complaint investigation is pending, the complaint investigation with respect to all issues in the request for a due process hearing shall be halted pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed in accordance with (d) above.

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

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

Amended (b); in (c), added a new 2 and recodified former 2 as 3; added a new (d) and recodified former (d) as (e); and recodified former (e) through (i) as (f) through (j).

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

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

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 (b) through (f).

#### Case Notes

Regulation authorizing the Office of Special Education Programs (OSEP) to issue a final decision following its complaint investigation, N.J.A.C. 6A:14-9.2(c), is valid, and thus the School Board could not appeal OSEP's investigation decision to the Commissioner of Education. Board of Educ. of the Lenape Reg'l High Sch. Dist. v. New Jersey State Dep't of Educ., 399 N.J. Super. 595, 945 A.2d 125, 2008 N.J. Super. LEXIS 87 (App.Div. 2008).

State special education regulations addressing complaint time limitations and procedures applicable to complaint and due process hearing request concerning the same issue mirrored language of equivalent federal regulations and satisfied federal requirements. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations concerning implementation of final decisions of state educational agency (SEA) with respect to complaint investigations sufficiently complied with federal requirement that corrective action plan be developed and all aspects of final decision be implemented, and were broad enough to encompass all needed implementation tools, despite failure to specify therein particular implementation procedures. Baer v. Klagholz, 771 A.2d 603 (2001).

State special education regulations governing complaint procedures, requiring development of corrective action plan, requiring that objectives and strategies for correcting each non-compliance item be set forth in such plan, and permitting the state Department of Education to take any action deemed necessary should corrective action plan be inadequate, were sufficient to conform to federal regulatory requirements that deficiencies be remediated and appropriate services provided to students with disabilities. *Baer v. Klagholz*, 771 A.2d 603 (2001).

State special education regulations requiring "a report of findings [and] conclusions" in connection with minimum state complaint procedures required determination as to whether public agency had violated any requirement of the Individuals with Disabilities Education Act (IDEA), as mandated by federal regulations, despite failure to specify particular determinations required to be made in connection with complaint procedures; state regulation's list of activities to be undertaken in investigating complaints was not exclusive, and investigation of and report on complaints of IDEA violations was clearly within its contemplated scope. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Under state special education regulations governing notice of corrective actions intended to be taken by the state Department of Education in response to parent complaints, county office of education was required to notify a noncompliant educational agency should local education agency (LEA) fail to do so. *Baer v. Klagholz*, 771 A.2d 603 (2001).

Allegation that a school district, by hiring a private contractor, violated the law because the district already employed a teaching staff member who was certified to provide speech and language services to a special education student, was based on alleged violations of special education regulations, and not any violations of any teacher's tenure, seniority rights, or any other rights that arise under the school laws; as such, because the claim was really a claim that the district violated the requirements of State regulations governing the provision of special education and related services, the matter should have been taken before Office of Special Education Programs under N.J.A.C. 6A:14-9.2 and was not properly before the Commissioner or Office of Administrative Law. *Long Beach Island Educ. Ass'n v. Bd. of Educ. of Long Beach Island Consol. School Dist.*, OAL Dkt. No. EDU 10501-07, 2009 N.J. AGEN LEXIS 1017, Final Decision (October 13, 2009).

Adopting Initial Decision's conclusion that the Commissioner of Education has no jurisdiction to consider an appeal from the final decision of the Office of Special Education Programs issued in response to a complaint investigation conducted under N.J.A.C. 6A:14-9.2 (adopting and modifying 2006 N.J. AGEN LEXIS 441). *Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ.*, OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J. AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

Complaint investigation process established in N.J.A.C. 6A:14-9.2, when read in conjunction with the Individuals with Disabilities Education Act (IDEA) provisions it implements, clearly contemplates that the Office of Special Education Programs Director's decision on any complaint is the final decision of the agency; this conclusion is strengthened by the absence in N.J.A.C. 6A:14-9.2 of a comparable provision to N.J.A.C. 6A:14-9.1(h), where the right of appeal to the Commissioner is expressly specified. *Lenape Reg'l H.S. Dist. Bd. of Educ. v. N.J. State Dep't of Educ.*, OAL Dkt. Nos. EDU 2781-06 (EDU 8853-01 ON REMAND), EDU 2779-06 (EDU 735-03 ON REMAND), EDU 496-06, EDU 2780-06 (EDU 8012-05 ON REMAND) and EDU 2595-05, 2006 N.J. AGEN LEXIS 920, Commissioner's Decision (October 16, 2006), aff'd, SB Nos. 41-06, 42-06 and 43-06, 2006 N.J.

AGEN LEXIS 1086 (N.J. State Bd. of Educ. April 4, 2007), aff'd, 2008 N.J. Super. LEXIS 87 (App.Div. April 22, 2008).

## SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS

### 6A:14-10.1 Early intervention programs serving children between birth and age three

Early intervention programs shall be administered by the Department of Health and Senior Services as the lead agency in collaboration with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

### 6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health and Senior Services for students age three

(a) When an IEP is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that student by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6A:14-1.1(d) shall be met;
2. A contractual agreement shall be provided between the district board of education and the early intervention program;
3. Personnel shall be appropriately certified and, if required, licensed; and
4. Applications for exceptions according to N.J.A.C. 6A:14-4.9 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

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

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

In (a)4, amended NJAC reference.

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

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

In (a)4, substituted "4.9" for "4.10".