CHAPTER 6A

SPECIAL EDUCATION PROGRAM

Authority

N.J.S.A. 52:14F-5(e), (f), and (g).

Source and Effective Date

Effective: August 24, 2017.
See: 49 N.J.R. 3355(a).

Chapter Expiration Date

Chapter 6A, Special Education Program, expires on August 24, 2024.

Chapter Historical Note

Chapter 6A, Special Education Program, was adopted as R.1982 d.462, effective January 3, 1983. See: 14 N.J.R. 930(a), 15 N.J.R. 25(b).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1987 d.200, effective May 4, 1987, operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1990 d.169, effective March 19, 1990. See: 21 N.J.R. 2693(a), 22 N.J.R. 916(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.1995 d.176, effective February 27, 1995. See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.2000 d.94, effective February 10, 2000. See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Chapter 6A, Special Education Program, was readopted as R.2005 d.261, effective July 11, 2005. See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).

Chapter 6A, Special Education Program, was readopted as R.2010 d.275, effective October 29, 2010. As a part of R.2010 d.275, Subchapter 3, Commencement of Case, was adopted as new rules, effective December 6, 2010. See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 6A, Special Education Program, was scheduled to expire on October 29, 2017. See: 43 N.J.R. 1203(a).

Chapter 6A, Special Education Program, was readopted, effective August 24, 2017. See: Source and Effective Date.

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SUBCHAPTER 1. APPLICABILITY

1:6A-1.1 Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6A:14. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (a), substituted "6A:14" for "6:28".

Law Reviews and Journal Commentaries

Procedural Basics of Special Education Hearings. Joseph R. Morano, 222 N.J.L.J. 1 (2003).

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)1994, 42 F.3d 149, rehearing and rehearing in banc denied.

Although special hearing rules applicable to special education do not authorize a sanction for failure to comply with a discovery order, those same rules specifically provide that any aspect of notice and hearing not covered by the special rules shall be governed by the Uniform Administrative Procedure Rules, which does allow for such sanctions; therefore, the absence of a special rule on sanctions is not an inconsistency with the general rules, but rather is an area not covered by the special rules. 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).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. COMMENCEMENT OF CASE

1:6A-3.1 Commencement of case

Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7, the Office of Special Education Programs shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6A-4.1 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any request for an adjournment based upon on-going settlement efforts by the parties shall comply with the requirements of N.J.A.C. 1:6A-9.2.

The following annotations apply to N.J.A.C. 1:6A-4.1 prior to its repeal by R.2010 d.275:

Amended by R.1990 d.405, effective August 6, 1990.
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).
In (f): Added language specifying that parents shall provide the Department with a telephone number for contact.
Recodified from N.J.A.C. 1:6A-4.2 and amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Rewrote the section. Former N.J.A.C. 1:6A-4.1, Notice of available legal service, repealed.
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (a), substituted "offer mediation" for "determine whether mediation is requested" in the introductory paragraph and rewrote 2; rewrote (c) and (d).

The following annotation applies to N.J.A.C. 1:6A-4.1 subsequent to its recodification from N.J.A.C. 1:6A-4.3 by R.2010 d.275:

Recodified from N.J.A.C. 1:6A-4.3 and amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Rewrote (b). Former N.J.A.C. 1:6A-4.1, Mediation by the Department of Education, repealed.

Case Notes

Commissioner of Education lacks jurisdiction to enforce settlement agreement in special education case. Bellesfield v. Randolph Township Board of Education, 96 N.J.A.R.2d (EDU) 35.

1:6A-4.2 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

1:6A-4.3 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Section was "Ongoing settlement efforts".

SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation

(a) At a hearing, any party may be represented by legal counsel or accompanied and advised by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both. Parents and children may be represented by individuals with special knowledge or training with respect to handicapped pupils and their educational needs.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

Amended by R.1995, d.176, effective March 20, 1995.
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:6A-9.1 Scheduling of hearing by Office of Administrative Law

(a) Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7, the representative of the Office of Special Education Programs shall immediately contact the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call.

(b) The Office of Special Education Programs shall immediately transmit the matter to the Office of Administrative Law with the transmittal form. Copies of any motions or other documents shall be filed subsequently with the assigned judge.

Amended by R.1990 d.405, effective August 6, 1990.
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).
Revised section into subsections (a) and (b).
Deleted "agreed upon by all parties" referring to later date scheduling.
Added sentence; "If the parents . . , by the clerk."
Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Rewrote (a); and in (b), substituted a reference to scheduling calls for a reference to conferences.
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
Rewrote the section.
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (a), substituted "Upon unsuccessful conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7" for "At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled" and "immediately contact" for "telephone".

1:6A-9.2 Adjonrnments

(a) The judge may grant an adjournment of the hearing at the request of either party. Any adjournment shall be for a specific period of time. When an adjournment is granted, the deadline for decision will be extended by an amount of time equal to the adjournment.

(b) No adjournment or delay in the scheduling of the hearing shall occur except at the request of a party.

New Rule, R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
In (a), inserted "of the hearing" following "adjournment".
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
Added (c) and (d).
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Deleted (c) and (d).

SUBCHAPTER 10. DISCOVERY

1:6A-10.1 Discovery

(a) All discovery shall be completed no later than five business days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall, to the greatest extent possible, consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Rewrote (a); and in (c), substituted a reference to bnsiness days for a reference to days.

Case Notes

In an administrative proceeding under the Individuals with Disabilities Education Act, an administrative law judge did not err by admitting an assessment report that was submitted by a child's parents four days before the scheduled hearing; admission of the report was a proper exercise of discretion under N.J.A.C. 1:6A-10.1(c) given the parents' explanation that the report was submitted the day it was completed. New Milford Bd. of Educ. v. C. R., 431 Fed. Appx. 157, 2011 U.S. App. LEXIS 12244 (2011).

That the district may have provided the parents of a disabled child copies of evaluation reports, IEP's or other materials at some date in the past did not relieve the district of their obligation to comply with discovery. The district was obligated to disclose items intended to be introduced at an administrative hearing five days prior to the hearing and its failure to do so resulted in the exclusion of such evidence for purposes of the plenary hearing. Z.J. ex rel. L.J. v. Audubon Bd. of Educ., OAL DKT. EDS 6203-06, 2006 N.J. AGEN LEXIS 834, Final Decision (Order Excluding Evidence) (September 11, 2006), aff'd (in related filing), 2008 U.S. Dist. LEXIS 71122 (D.N.J. September 10, 2008).

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:6A-12.1 Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justi-

fies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which comply with the standards set forth in N.J.A.C. 6A:14-2.7(r). Emergency relief applications which fail to comply with the procedural requirements above or which do not comply with the standards set forth in N.J.A.C. 6A:14-2.7(r) shall be processed by the Department in accordance with N.J.A.C. 1:6A-9.1.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief pending issuance of the decision in the matter or, for those issues specified in N.J.A.C. 1:6A-14.2(a), may order a change in the placement of a student to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2), if the judge determines from the proofs that:

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

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

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

4. 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.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested relief, the judge shall return the parties to the Department of Education for conclusion of the resolution process or mediation, as provided in N.J.A.C. 6A:14-2.7.

Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
In (a), substituted "State Director of the Office of Special Education Programs" for "Department of Education, attention Division of Special Education" in the first sentence; and rewrote (e) and (g).
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (b) and (g), substituted "1:6A-4.1" for "1:6A-4.2".
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (b), substituted "comply with the standards set forth in N.J.A.C. 6A:14-2.7(r)" for "would justify emergency relief under this section", deleted "show no right to emergency relief or" preceding "fail", inserted "or which do not comply with the standards set forth in N.J.A.C. 6A:14-2.7(r)" and updated the N.J.A.C. reference; and rewrote (g).

Case Notes

Parents of handicapped student were not entitled to order requiring state agencies to fund residential costs. Woods on Behalf of T.W. v. New Jersey Dept. of Educ., D.N.J.1993, 823 F.Supp. 254.

District court lacked power to vacate administrative denial of funding for residential placement of handicapped student. Woods on Behalf of T.W. v. New Jersey Dept. of Educ., D.N.J.1993, 823 F.Supp. 254.

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

Emotionally disturbed child and his parent were "prevailing parties". E.P. by P.Q. v. Union County Regional High School Dist. No. 1, D.N.J.1989, 741 F.Supp. 1144.

Parents of an 18 year old high school senior who was scheduled to graduate were denied emergent relief on their claim that the senior did not possess adequate life and social skills and should be retained for another year. The parents failed to reject the final IEP that was proposed for the student's senior year and thus could not satisfy the emergent relief requirement that they show that their claim was supported by a settled legal right. L.M. et al ex rel. C.B. v. Mahwah Twp. Bd. of Educ., OAL DKT. NO. EDS 08590-17, 2017 N.J. AGEN LEXIS 490, Order Denying Emergent Relief (June 27, 2017).

Petition filed by a special education student under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1415, to challenge a school board's disciplinary ruling that her conduct in engaging in a fight with another student provided grounds to deny her the right to participate in graduation ceremonies was dismissed for lack of jurisdiction because her claim was not cognizable under the IDEA. And even if the petition was considered under rules governing demands for emergent relief in special education matters, the student did not and could not demonstrate that the law was settled in her favor or that she had a likelihood of success on the merits because the law was well-settled in favor of the school board. G.G. ex rel. C.J. v. Jersey City Bd. of Educ., OAL DKT. NO. EDS 08702-17, 2017 N.J. AGEN LEXIS 419, Order Denying Emergent Relief (June 21, 2017).

Parent of special education student who sought to prevent a high school district from awarding his son a diploma based on the parent's belief that his son was not socially ready to graduate was denied emergent relief. The claim in essence was a challenge to the son's last IEP, which anticipated that he would graduate at the conclusion of his senior year. That being so, the parent was required to object to the IEP within 15 days of written notice that it had been proposed. Because no objection was asserted at that time, a settled legal right to relief had not been shown, and emergent relief was unauthorized. E.S. ex rel. J.S. v. Buena Reg'l Bd. of Educ., OAL DKT. NO. EDS 07861-17, 2017 N.J. AGEN LEXIS 373, Order Denying Emergent Relief (June 8, 2017).

The parents of an emotionally-disturbed sixth-grader were not entitled to emergent relief on claims that there had been an interruption in the special education services being delivered to their son and that the district was not providing FAPE. The evidence established that there was no interruption in services and that the only reason that homebound instruction was not being provided was that the boy's parents had failed and refused to cooperate with the district in arranging for the same. L.B. ex rel. W.B. v. Green Brook Twp. Bd. of Educ., Somerset Cnty., OAL DKT. NO. EDS 03903-17, 2017 N.J. AGEN LEXIS 178, Ruling Denying Emergent Relief (March 28, 2017).

Learning center at which a student who was receiving special education services had been enrolled won emergent relief allowing it to proceed to expel the student, who then would be placed on home instruction pending another placement. Given the student's violent behavior, which made her a danger to the center's staff, to other students and to herself, her parent's request for emergent relief to prevent a "break in service" and to force the center to allow the student to remain enrolled was denied. Y.G. ex rel. S.G. v. Union Twp. Bd. of Educ. et al, OAL DKT. NO. EDS 19267-16, 2017 N.J. AGEN LEXIS 69, Order on Emergent Relief (February 1, 2017).

School district's placement, in an in-district alternative high school, of a student who was eligible for special education and related services under the categories of multiply disabled, emotionally disturbed, other health inpaired, cognitive inpairment (mild), and specific learning disorder was properly recognized as a "stay-put" placement, and the student's parent did not establish that the student was entitled to emergent relief to move him to a different school. K.R. ex rel J.R. v. Cherry Hill Twp. Bd. of Educ., OAL DKT. NO. EDS 13514-16, 2016 N.J. AGEN LEXIS 782, Decision on Emergent Relief (September 15, 2016).

Where a special education student's IEP did not provide for Extended School Year (ESY) instruction, a right to emergent relief to require a district to place the student in a summer program at a substance abuse facility was not shown. The IEP did not provide for ESY and there was no showing that ESY was necessary to avoid regression, so there was not a likelihood of success on the merits on the claim that the student was entitled to ESY. Moreover, since the facility chosen by the parents was not a "school," ESY at that facility was not authorized in any event. J.T. ex rel. E.M. v. Jersey City Bd. of Educ., OAL DKT. NO. EDS 09745-16, 2016 N.J. AGEN LEXIS 610, Final Decision (July 13, 2016).

Irreparable harm sufficient to justify a grant of emergent relief was established by a school district that sought to compel the mother of a special education student to consent to a release of the student's records so that the district could provide them to several private institutions which sponsored educational programs of the type that might meet the student's needs. The mother had refused to authorize the record release on the ground that she would only permit her son to be enrolled in a public program. The mother's refusal was preventing the district from providing the child with an educational program that was designed to address his needs and all prerequisites to a grant of emergent relief were satisfied. Franklin Twp. Bd. of Educ. v. N.K. ex rel. M.M., OAL DKT. NO. EDS 07818-16, 2016 N.J. AGEN LEXIS 440, Decision on Emergent Relief (June 6, 2016).

Irreparable harm sufficient to justify a grant of emergent relief was established by a school board that was seeking to compel the parents of a special education student whose parents refused to consent to a proposed psychiatric evaluation. The refusal was the cause of a break in the delivery of required services by the board and had prevented the board from determining the appropriate next steps for the student, whose continuously disruptive behavior was frustrating the board's efforts to provide him for a FAPE. Clifton Bd. of Educ. v. I.Y. and M.Y. ex rel. D.Y., OAL DKT. NO. EDS 07235-16, 2016 N.J. AGEN LEXIS 397, Decision on Motion for Emergent Relief (May 25, 2016).

Emergent relief was granted against a school district that failed to afford the family members of a disabled student notice and a hearing of its cessation of transportation services. Though the student had previously resided within a district that had a send/receive agreement with the district against which relief was granted, he had been living, presumably on a temporary basis, with family members in a different district but was continuing to attend high school in the school district. C.C. et al. ex rel. P.C. v. Somerville Borough Bd. of Educ., Branchburg Twp. Bd. of Educ., and Ridgefield Park Bd. of Educ., OAL DKT. NO. EDS 17625-15, 2015 N.J. AGEN LEXIS 575, Decision on Emergent Relief (November 20, 2015).

Emergent relief was granted to a school district on its claim that the parents of a disabled child were obligated to cooperate with the district in its effort to reevaluate the child prior to the date on which her current Individualized Educational Program (IEP) would expire on findings that the district established that a failure to reevaluate the child in a timely manner could expose the district to the imposition of sanctions by the N.J. Department of Education. Gloucester City Bd. of Educ. v. A.H. et al. ex rel. G.H., OAL DKT. NO. EDS 09165-15, 2015 N.J. AGEN LEXIS 570, Decision on Emergent Relief (July 14, 2015).

Parent of a student who was claimed to be eligible for a "504" plan did not establish grounds for a grant of emergent relief in the form of an order requiring a school district to develop and provide a "504" plan due to the student's emotional needs. The district established that it had repeatedly sought the parent's consent to obtain social, psychological and education evaluations of the student only to have the parent refuse to consent to such evaluations. The parent apparently also refused to provide medical documentation concerning the student from any private physician. Since the reason that a "504" plan had not been proposed and implemented was that the district did not have the results of the required professional evaluations, the parent was not entitled to any relief. V.R. ex rel. J.R. v. Newark Bd. of Educ., OAL DKT. NO. EDS 06246-15, 2015 N.J. AGEN LEXIS 229, Final Order Denying Emergent Relief (May 8, 2015).

Parent of an autistic child who suffered from chronic asthma won emergent relief in the form of an order continuing medical transport for the child after a school board advised the parent that the medical transport services previously provided were being terminated. The board had offered to provide the child with an aide who would travel on a typical school bus with the child and be prepared to operate his inhaler or administer an Epipen in the event that the child experienced an asthma attack. Because the parent had met all of the conditions for emergent relief – including showing a risk of irreparable harm, a settled legal right, a likelihood of prevailing on the merits of the claim, and harm to the student that exceeded that which the district might suffer if relief was not granted – the parent was entitled to the order that it sought. However, issues relating to the proposed placement of the child in a therapeutic school for children with autism would not be considered in this proceeding but in a full due process hearing. Elizabeth Bd. of Educ. v. T.D. ex rel. E.D., AGENCY DKT. NO. 2015 22392, 2015 N.J. AGEN LEXIS 160, Order Granting Emergent Relief (March 27, 2015).

Parents were not entitled to emergent relief pursuant to N.J.A.C. 1:6A-12.1(e) in the form of an out-of-district placement for their child. Even if they were able to meet the irreparable harm standard based on regression and safety issues, which were highly contested by the Jackson Township Board of Education, the legal right underlying their claim was far from settled. A discrimination complaint was not appropriate for decision by way of an application of emergent relief. There were too many material facts in dispute to determine the parents' likelihood of success. Although the facts were speculative, when the equities were balanced, the parents would suffer greater harm than the Board would suffer if they were not granted the out-of-district placement. However, the parents did not meet all four prongs of the standard required for emergent relief. B.D. and N.D. ex rel. S.D. v. Jackson Twp. Bd. of

Educ., OAL DKT. NO. EDS 16940-14, 2015 N.J. AGEN LEXIS 20, Emergent Relief (January 9, 2015).

Parent of a special needs student was not entitled to emergent relief under the standards of N.J.A.C. 6A:14-2.7(m)1, N.J.A.C. 1:6A-12.1(e), and N.J.A.C. 6A:14-2.7(s)1 in the form of returning the student to the Carpentry program that he began at the Assunpink Center of the Mercer County Technical Schools (MCTS). Parent did not set forth facts that demonstrated immediate need for relief or irreparable harm that would occur if requested relief was not granted. There were many factual issues in dispute regarding the nature of the program and student's success in it so far. In addition, student continued to receive educational and support services from MCTS that were set forth in his IEP. J.G. ex rel. J.G. v. Hamilton Twp. Bd. of Educ. and Mercer County Technical Sch., OAL DKT. NO. EDS 15609-14, 2014 N.J. AGEN LEXIS 805, Emergent Relief (December 23, 2014).

Parents' request for emergent relief to maintain their daughter's stay-put placement was premature because the daughter had to remain in an interim alternative educational setting until the end of the 45-day removal period or until a decision was rendered in the expedited hearing, whichever came first, which was an exception to "stay-put" under N.J.A.C. 6A:14-2.7(u). In addition, the parents did not show entitlement to emergent relief under the standards of N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s). Their claims that the interim setting was exclusively for students who, unlike their daughter, were violent and that the interim setting was "like a jail," without any facts supporting these claims were insufficient to show that the daughter would suffer irreparable harm if she was not returned to her stay-put placement. The parents would have a legal right to have their daughter returned to the stay-put placement if it was determined that the school district acted improperly in removing her. They did not show a likelihood of success on the merits because they did not show that the school district lacked a preponderance of credible evidence to support the removal. The daughter would not suffer greater harm than the school district if she was not immediately returned to the stay-put placement. R.M. And V.M. ex rel. J.M. v. Washington Twp. Bd. of Educ., OAL DKT. NO. EDS 15798-14, 2014 N.J. AGEN LEXIS 788, Emergent Relief (December 23, 2014).

Emergent relief was denied to the parents of an 11-year-old boy who was removed from his 5th grade general education school placement where he was also receiving speech-language services per an IEP after the student brought two knives to school and displayed them to other students, which removal occurred after the school district determined that his conduct in bringing the knives to school was not a manifestation of his disability. Not only were the underlying merits of the removal petition not properly considered on an emergent basis given the determination that the conduct was not a manifestation of the student's disability, but the prerequisites for emergent relief in the form of an order requiring him to be returned to his last-agreed upon placement, receiving speech-language services, were not met. While there technically was no break in educational services within the meaning of N.J.A.C. 6A:14-2.7(r), it was undisputed that there has been a diminished educational benefit where, as here, the student was receiving only 2 hours of educational enrichment daily. Nonetheless, the district had a compelling interest in ensuring the safety of the student body and of the student himself. Because the district's sole condition was that the student submit to a psychiatric evaluation that cleared him to return to school, there cannot legitimately be irreparable harm present, and the absence of irreparable harm meant that the criteria for emergent relief in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s) had not been met. J.W. and P.W. ex rel. M.W. v. North Brunswick Twp. Bd. of Educ., OAL DKT. NO. EDS 8938-14, AGENCY DKT. NO. 2014 21363, 2014 N.J. AGEN LEXIS 490, Decision on Request for Emergent Relief (August 15, 2014).

The mother of an 11-year-old child who had been the subject of a disciplinary removal from school in connection with the filing of a Harassment, Intimidation and Bullying (HIB) complaint was not entitled to emergency relief in the form of an order returning him to school. First, the mother's disagreement with the HIB allegations and substantiation was not ripe for adjudication by the issuance of emergency relief because there was an entirely separate appeal process that applied in HIB cases. Second, the mother did not make an adequate showing of the elements in N.J.A.C. 1:6A-12.1(a) and N.J.A.C. 6A:14-2.7(r). That is, the fact that school was no longer in session weighed heavily against an argument for irreparable harm since there was no danger that educational services being provided to the child would cease or be interrupted. Similarly, the mother failed to demonstrate a likelihood of success on the merits or that there is any legal basis to support her underlying claim. Finally, balancing the equities and interests of the parties, it was not shown that the child would suffer greater harm if emergent relief was denied. V.E. and L.B. ex rel. P.B. v. Totowa Bd. of Educ., OAL DKT. NO. EDS 7823-14, AGENCY DKT. NO. 2014 21292, 2014 N.J. AGEN LEXIS, Decision on Emergent Relief (July 3, 2014).

An Administrative Law Judge (ALJ) concluded that all of the emergent relief criteria in N.J.A.C. 1:6A-12.1 and N.J.A.C. 6A:14-2.7(s) had been met by an application by the parent of a high school student for an order approving placement of the student, who was suffering from psychiatric problems, in an out-of-state residential treatment program. The school board agreed that a residential treatment program was called for but preferred that the student be placed in a program in New Jersey. However, the board was unable to identify a single facility in New Jersey that met all of the criteria of the student's treatment plan. Because the board could not identify an appropriate in-state placement and because the parties agreed that the out-of-state program in fact met those criteria, emergent relief was properly granted. G.D. and G.D. ex rel. A.D. v. Brick Twp. Bd. of Educ., OAL Dkt. No. EDS 2424-14, AGENCY Dkt. No. 2014 20804 E, 2014 N.J. AGEN LEXIS 45, Emergent Relief Decision (March 6, 2014).

Parents of a school aged child who concededly suffered from multiple disabilities were entitled to an emergency order issued per N.J.A.C. 1:6A-12.1 under which the child would receive ten hours of home instruction during the 2013 extended school year (ESY) on grounds including that the school district, by its offer to provide such instruction, had impliedly conceded that such ESY services were properly afforded. However, the parents were not entitled to an increase, to 15, of the number of hours to be provided each week because neither of the physicians who submitted letters in support of the parents' request for additional hours provided any rationale for why the number of hours was properly increased. S.P. and C.P. ex rel. M.P., v. Lakewood Twp. Bd. of Educ., OAL Dkt. No. EDS 9575-13, AGENCY Dkt. No. 2014 20034, 2013 N.J. AGEN LEXIS 203, Final Decision on Motion for Emergent Relief (July 22, 2013).

Proper standard to be used when emergency relief per N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1 is sought in connection with a proposed change, by a school district, in the placement of a student under an agreed-upon Individualized Education Program (IEP) is that which is provided in the "stay put" provisions of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. § 1400. Where a school board and the parents of the student had agreed on the placement of the student in a private program and the student in fact had been so placed, that placement was properly maintained under the "stay put" provisions of IDEA during the pendency of any litigation and notwithstanding any claim by a county office of education that the placement did not satisfy the so-called "Naples" requirements, and such placement was properly maintained until any issue regarding the program, whether raised under N.J.A.C. 6A:14-4.3(b)10 or N.J.A.C. 6A:14-6.5 or otherwise, was determined. N.W. and R.W. ex rel. M.W., v. Lakewood Twp. Bd. of Educ., OAL Dkt. No. EDS 9524-13, AGENCY Dkt. No. 2014-200007, 2013 N.J. AGEN LEXIS 202, Final Decision on Motion for Emergent Relief (July 16, 2013).

School district's agreement to reimburse the parent of a disabled child who was eligible for special education services for tuition paid by the parent by reason of the child's placement in an independent school, which placement was undertaken unilaterally by the parent, did not resolve any issue regarding the child's right to attend an extended school year (ESY) program sponsored by that school. Not only did the agreement not establish a placement that was entitled to protection under the state's "stay put" provisions in N.J.A.C. 6A:14-2.6(d)10 and N.J.A.C. 6A:14-2.7(u), but the agreement expressly disclaimed any suggestion that the district had "agreed" to the unilateral placement. Because treatment of the unilateral placement as a placement that was entitled to "stay put" protection was the basis for the parent's application for an emergency order, the parent's application did not satisfy the criteria for such

relief in N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)1. K.L. ex rel. R.L. v. Berlin Bd. of Educ., OAL Dkt. No. EDS 8529-2013, Agency Dkt. No. 2013-19893, 2013 N.J. AGEN LEXIS 184, Initial Decision (July 2, 2013).

Parent was entitled to an emergent order under N.J.A.C. 1:6A-12.1(e) granting her child the privilege of participating in his graduation ceremony. The child would be irreparably harmed because denying him the privilege to participate in graduation ceremonies would deprive him of the recognition he earned over the last four years. A manifestation determination concluded that his disability contributed to his behavior and, therefore, he could not be penalized for such. Depriving him participation in the graduation ceremony was a form of discipline. The parent established a likelihood of success on the merits if the case were to go to a plenary hearing due to the manifestation determination in his favor. The granting of relief to the parent, on balance, would not harm the school district. A.T. o/b/o T.G. v. Bridgeton Bd. of Educ., OAL Dkt. No. EDS 7063-13, 2013 N.J. AGEN LEXIS 170, Final Decision (June 6, 2013).

Mother's application for emergency relief in the form of immediate placement of the student back in her current program with appropriate supports to allow the student to attend school in a wheelchair was denied where there was no evidence that the student was being excluded from her current program and placement due to her temporary need for a wheelchair and where the district reasonably accommodated the student's needs by keeping her in her current program with accommodations and supports, rendering the application moot. "Stay put" was not applicable because there was no change in the student's educational placement. K.M. ex rel. P.T. v. Pennsauken Twp. Bd. of Educ., OAL Dkt. No. EDS 11759-10, 2010 N.J. AGEN LEXIS 599, Decision Denying Emergent Relief (November 5, 2010).

Mother was not entitled to emergent relief in the form of a residential program for her moderately impaired high school student where the evidence demonstrated that the student's concerning behaviors, which included ingesting potentially dangerous foods and materials, an inability to make good judgments, and engaging in dangerous activities, would be adequately addressed in a self-contained class in the regular high school. K.M. ex rel. R.M. v. Ramsey Bd. of Educ., OAL Dkt. No. EDS 08067-10, 2010 N.J. AGEN LEXIS 430, Order Denying Emergent Relief (August 12, 2010).

Parents of a six-year-old student who suffered from an inherited degenerative retinal disease were not entitled to emergent relief in the form of reimbursement for tuition and transportation because the parents' contention that the district would not be ready to educate the student in accordance with the IEP, which provided for an in district program with specific modifications and accommodations, including a certified teacher of the blind and visually impaired, books and materials in Braille, and a Braille enriched environment, was merely speculative, especially where the district claimed that it had entered into a contract with the Commission for the Blind and Visually Impaired and would, in fact, be ready to provide the student with a FAPE in accordance with the agreed-upon IEP. S.N. ex rel. I.N. v. Washington Twp. Bd. of Educ., OAL Dkt. No. EDS 7992-10, 2010 N.J. AGEN LEXIS 416, Order Denying Emergent Relief (August 6, 2010).

Mother's application for an emergent order requiring the district to offer her eight-year-old student summer tutoring in order to allow him to enter high school instead of repeating the eighth grade was denied because it was not likely that one month of additional tutoring would remediate the student's academic deficiencies. Additionally, a plenary hearing was the appropriate forum in which to address the student's extensive problems where the real issue presented was not promotion to ninth grade, but rather the student's long-term educational success. S.C. ex rel. J.C. v. Warren Hills Reg'l High School Bd. of Educ., OAL Dkt. No. EDS 07414-10, 2010 N.J. AGEN LEXIS 397, Order Denying Emergent Relief (July 22, 2010).

Mother of a five-year-old student who was previously classified as "a preschool child with a disability" was not entitled to emergent relief in the form of an extended school year where she failed to show that the IEP's proposal of 30 minutes per week of speech-language therapy during the summer, as opposed to two hours per day that he received the previous two summers, would have resulted in irreparable harm. M.H. ex rel. G.H. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 7215-10, 2010 N.J. AGEN LEXIS 324, Order Denying Emergent Relief (July 19, 2010).

Parents were not entitled to emergent relief in order to allow their daughter to graduate where they failed to show that their claim was settled and that they were likely to prevail on the merits as the student had failed a number of classes and simply did not meet the qualifications to earn the right to graduate. The parents' claim that the student was being excluded from participating in the graduation solely by reason of her disability, ADHD, was disputed. C.E. ex rel. N.E. v. Lawrence Twp. Bd. of Educ., OAL Dkt. No. EDS 6067-10, 2010 N.J. AGEN LEXIS 457, Order Denying Emergent Relief (June 17, 2010).

Nineteen-year-old student classified as eligible for special education and related services under the category of Traumatic Brain Injury was properly set to graduate where he had already completed five years of high in order to allow him to transition from college preparation classes to vocational classes, had earned the requisite credits to graduate, and there was no indication that a sixth year of high school would have been beneficial to him in any way. N.W. v. East Orange Bd. of Educ., OAL Dkt. No. EDS 6025-10, 2010 N.J. AGEN LEXIS 299, Order Denying Emergent Relief (June 16, 2010).

Mother's application for emergent relief to allow her son to attend his senior prom was denied because failure to attend prom would not result in irreparable harm and the evidence demonstrated that the student had acquired the requisite number of disciplinary "points" to exclude him from all extracurricular activities. The Administrative Law Judge was not in a position to evaluate the merits of each of the points the student had acquired over the year. K.B. ex rel. Q.B. v. Moorestown Twp. Bd. of Educ., OAL Dkt. No. EDS 4416-10, 2010 N.J. AGEN LEXIS 244, Order Denying Emergent Relief (May 14, 2010).

Mother of a multiply disabled student was not entitled to emergent relief in the form of a residential program for the student because the functional behavioral analysis submitted in support of her application did not include a specific recommendation for a residential program or an expert's opinion or report on the issue; it was impossible to make determinations, based upon the mother's submissions, that the existing IEP was inadequate or that the IEP needed to be revised to provide for a residential program. S.B. ex rel. J.B. v. Hanover Park Reg'l High School District Bd. of Educ., OAL Dkt. No. EDS 01696-10, 2010 N.J. AGEN LEXIS 126, Order Denying Emergent Relief (March 1, 2010).

Petitioners were not entitled to the prior "stay put" because they entered into a subsequent Settlement Agreement, which terminated and superseded their right to the 2008-2009 "stay put" IEP; additionally, petitioners were not entitled to the temporary program and placement set forth in the Settlement Agreement, which was explicitly stated to terminate effective October 30, 2009. C.T. ex rel. J.H. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 10598-09, 2009 N.J. AGEN LEXIS 770, Emergent Relief Decision (November 9, 2009).

Petitioners were entitled to a "stay put" order where nothing in the record showed that the district obtained final consent from the parent for their proposed placement changes for the student, nor did the record show that they invoked the IEP process as set forth in statute or regulations to implement their proposed changes; while the district may have been attempting in good faith to work with the parent and resolve the placement issue, it did not appear that it took the necessary steps to validate the changes it was attempting to implement. J.M. ex rel. P.M. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 10356-09, 2009 N.J. AGEN LEXIS 710, Emergent Relief Decision (October 13, 2009).

"Stay put" does not apply where the school district and the parents have expressly agreed to resolve the very issue within the IEP process. D.H. ex rel. M.H. v. Somerset Hills Regional Bd. of Educ., OAL Dkt. No. EDS 8743-09, 2009 N.J. AGEN LEXIS 690, Emergent Relief Decision (October 2, 2009).

Mother was not entitled to emergent relief, seeking change of placement from home instruction to the district's high school because irreparable harm was not established as long as the district was providing the student with home instruction for each of the four courses that he was supposed to be taking; if such instruction was not being provided, the district had to take whatever steps were necessary to ensure that he was not falling further behind by not receiving the education to which he was entitled. Additionally, the mother failed to demonstrate that the legal right to her claim was settled, especially where the district provided the mother with adequate notice of the IEP meeting, which she could not attend, provided her with the IEP that was created at that meeting, reviewed the IEP with her at a subsequent meeting, and followed up the meeting with her by sending a letter confirming that the need for an out of district placement was part of the IEP for 2009-2010; since the mother did not take action, such as requesting mediation through due process before the fifteenth day after the IEP was sent to her, the IEP was implemented without her signature and went into effect, indicating placement of the student out of district and home instruction became the "stay put" placement pending a determination of where he would be placed for the school year. A.D. ex rel. I.D. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 10009-09, 2009 N.J. AGEN LEXIS 680, Emergent Relief Decision (September 25, 2009).

School district was not entitled to emergent relief modifying the "stay put" placement of a six-year-old special education student because, although the affidavits and supporting documents presented by the district described behaviors by student in his kindergarten class and the district's attempts to deal with them, those behaviors were present during the pendency of the proceeding and the district did not file its emergent application until nine months into this matter; the district's application did not contain current information on the behavior and, while the district was not to be faulted for attempting to address possible future behavioral problems that the student might exhibit in the school year, the information presented in its emergent application did not meet the standard for setting aside the "stay put" placement. A.C. ex rel. D.F. v. Collingswood Borough Bd. of Educ., OAL Dkt. No. EDS 589-09, 2009 N.J. AGEN LEXIS 737, Emergent Relief Decision (September 17, 2009).

Although parents may not have timely requested mediation or due process within the time limits set forth in N.J.A.C. 6A:14-2.3, the failure to strictly comply with the regulation did not necessarily preclude parents and children from receiving its "stay put" protection, especially where the parents never signed the IEP, advised the district that they were not comfortable with the placement, and expressed a desire to seek another placement. The district was, therefore, on notice of the parents' disagreement with the placement. C.T. ex rel. J.H. v. Magnolia Boro Bd. of Educ., OAL Dkt. No. EDS 8945-09, 2009 N.J. AGEN LEXIS 623, Emergent Relief Decision (September 11, 2009).

Mother was entitled to emergency relief removing her son from Ancora Psychiatric Hospital, to Bancroft's Lindens Neurobehavioral Stabilization Program, a program for youngsters with severe behavioral disabilities; there was evidence that Ancora was ill-equipped to address the son's behavioral problems and that he was at substantial risk of physical harm by himself or others at Ancora. Additionally, there was a legal right underlying mother's claim, the mother would likely obtain residential placement for her son at a due-process hearing, and the son would suffer greater harm than the board would suffer if the requested relief was not granted. C.B. ex rel. C.B. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 4153-09, 2009 N.J. AGEN LEXIS 592, Emergent Relief Decision (September 9, 2009).

Parents were not entitled to emergent relief in their action seeking promotion of their child to seventh grade where the parents failed to provide any precedent showing that a grade promotion could be brought about through emergent relief, especially where courts give substantial deference to school boards on issues of promotion and retention; granting such relief without a full evidentiary hearing would have been almost impossible. R.L. ex rel. E.L. v. Holmdel Twp. Bd. of Educ., OAL Dkt. No. EDS 8811-09, 2009 N.J. AGEN LEXIS 581, Emergent Relief Decision (September 2, 2009).

Parents of a disabled student were not entitled to emergency relief in the form of transportation for the student to attend an extended school year program because there was a material factual dispute as to the evaluations and services to which the student was entitled and there was no settled legal right for the student to receive transportation to and from the out of district ESY programs in the afternoon. C.T. ex rel. J.H. v. Magnolia Borough Bd. of Educ., OAL Dkt. No. EDS 8278-09, 2009 N.J. AGEN LEXIS 508, Emergency Relief Decision (July 22, 2009).

Parents of a 19-year-old student with Asperger's Syndrome were not entitled to emergent relief in the form of an extended school year where the evidence revealed that the student was already attending the summer program and the only thing at issue was who was responsible for payment; the student would not suffer irreparable harm because he was already receiving the service. J.D. v. West Windsor-Plainsboro Regional Bd. of Educ., OAL Dkt. No. EDS 8122-09, 2009 N.J. AGEN LEXIS 497, Emergency Relief Decision (July 13, 2009).

Parents of a disabled student were not entitled to emergent relief in the form of an extension of an already scheduled extended school year (ESY); while ESY programs were typically in place to deal with the regression and recoupment issue that was especially important with regard to special education students, there was no showing that adding an additional two or three weeks to the already scheduled five week ESY session was warranted by the unique needs of their child. J.S. ex rel. C.S. v. Middletown Twp. Bd. of Educ., OAL Dkt. No. EDS 8023-09, 2009 N.J. AGEN LEXIS 453, Emergency Relief Decision (July 1, 2009).

Where a district demonstrated that it was in the process of evaluating a 17-year-old student upon his mother's concerns that he had a drug problem, the mother was not entitled to emergent relief to have her son's IEP include a summer internship/employment placement because the mother failed to demonstrate that he would suffer irreparable harm if he did not attend a summer school program. A.D. ex rel. T.W. v. West Morris Regional High Bd. of Educ., OAL Dkt. No. EDS 7181-09, 2009 N.J. AGEN LEXIS 457, Emergency Relief Decision (June 24, 2009).

Parent's request for emergent relief to allow her homebound instructed 14-year-old autistic son to participate in an eighth grade "step up" ceremony was denied because participation in such an event was a privilege not a right; additionally, the district had not yet determined that the student's behavior no longer posed a substantial risk to himself and others. J.W. ex rel. D.W. v. Glassboro Twp. Bd. of Educ., OAL Dkt. No. EDS 4992-09, 2009 N.J. AGEN LEXIS 456, Emergency Relief Decision (June 18, 2009).

School district's decision to prohibit a student from participating in graduation ceremonies due to his failure to achieve 20 credits of English, no matter how regrettable and unfortunate, could not be disturbed where attendance at graduation was a privilege, not a right, and, therefore, could not result in irreparable harm; the student's claim that he could not pass the class because he was suffering from depression was not supported by the record, especially where he was passing his other classes. S.S. v. Robbinsville Bd. of Educ., OAL Dkt. No. EDS 4959-09, 2009 N.J. AGEN LEXIS 455, Emergency Relief Decision (June 17, 2009).

Parents of a disabled high school senior, who was not allowed to participate in Senior Fest activities as part of a disciplinary measure because of his multiple suspensions, were not entitled to emergent relief to allow the student to participate because, especially where participating in such activities was a privilege and not a right, the parents failed to demonstrate that the student would suffer irreparable harm if the requested relief was denied; additionally, there were substantial facts in dispute as to whether any of the four suspensions given were given in error and it was imperative for the district to maintain the integrity of its disciplinary process. M.L. ex rel. S.L. v. Ewing Twp. Bd. of Educ., OAL Dkt. No. EDS 4950-09, 2009 N.J. AGEN LEXIS 454, Emergency Relief Decision (June 15, 2009).

Parents of a 19-year-old disabled student were entitled to emergent relief requiring the Board to fully implement the student's IEP, including its requirement that the student receive five hours per week of individualized services from an educational consulting program; the student was showing signs of distress from the change in schedule and he had a settled legal right to the program under the 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).

As an eight-year-old student classified with a specific learning disability was presently being afforded an educational program in the third grade, to which her parents agreed, if her program was proven to be inadequate in a plenary proceeding, then the demonstrated harm could be remedied in part by compensatory education. In the meantime, the student would not suffer irreparable harm if she was not immediately placed in second grade while an appropriate permanent placement was determined and it might be more harmful to place her back in second grade for a limited time if the ultimate conclusion came to be that she was appropriately placed in the third grade. H.B. ex rel. A.B. v. Mantua Twp. Bd. of Educ., OAL Dkt. No. EDS 8728-08, 2008 N.J. AGEN LEXIS 851, Emergent Relief Decision (October 3, 2008).

Parents were not granted relief on behalf of their son with reading, hearing, speech/language, and rhythm disorders and several medical concerns including chronic asthma and anxiety, for temporary placement by the board of education of their son in a special school for the start of his first year of high school, until a determination was made as to an appropriate permanent program and placement. The student's attendance "school avoidance" and behavioral issues had to be addressed so that he would go to school and sit-in and participate in class, and until that time he would not suffer irreparable harm if he was not placed immediately at the special school, nor would he suffer greater harm than the district board of education would suffer if the requested relief was not granted. K.K. ex rel. C.K. v. Summit Bd. of Educ., OAL Dkt. No. EDS 09802-08, 2008 N.J. AGEN LEXIS 811, Emergent Relief Final Decision (August 28, 2008).

Parents were not granted relief on behalf of their son with reading, hearing, speech/language, and rhythm disorders and several medical concerns including chronic asthma and anxiety, for temporary placement by the board of education of their son in a special school for the start of his first year of high school, until a determination was made as to an appropriate permanent program and placement. The parents' legal rights were not settled nor was their likelihood of prevailing on the merits of the underlying claim, particularly since the board had been prevented from following through with searches for a placement that incorporated an academic and therapeutic program and support services to address the son's emotional, behavioral, and educational needs and the parents refused to sign releases to allow the son's records to be distributed to possible placement locations. K.K. ex rel. C.K. v. Summit Bd. of Educ., OAL Dkt. No. EDS 09802-08, 2008 N.J. AGEN LEXIS 811, Emergent Relief Final Decision (August 28, 2008).

Board of education's willingness to place 16-year-old student classified as "emotionally disturbed" at a private high school with restriction that student not participate in three football games against home township's schools, was appropriate considering student's past assault against his former football coach. Student would not suffer irreparable harm by missing three games during the football season and, considering the past assault, it might be more harmful to the student if he did play those three games and did not learn that his actions had consequences. A.R. ex rel. A.R. v. Hamilton Twp. Bd. of Educ., OAL Dkt. No. EDS 8370-08, 2008 N.J. AGEN LEXIS 826, Emergent Relief Decision (August 25, 2008).

Emergency relief denied, as student was already enrolled in the summer program, so the matter was really one for reimbursement; in addition, there was no current evidence in the record to show the nature or extent of skill regression by the student during the two-month hiatus from the 10-month Transition to College Program. T.D. and G.D. ex rel. G.D. v. Winslow Twp. Bd. of Educ., OAL Dkt. No. EDS 4871-08, 2008 N.J. AGEN LEXIS 491, Emergent Relief Decision (July 8, 2008).

Emergent relief denied where parents requested that kindergarten student's one-to-one aide remain entirely focused on the student, who suffered from a serious peanut allergy, rather than drawing back into a shadow role and also assisting other students as necessary. Parents did not satisfy the irreparable harm element of the emergent relief test, given the vice-principal's credible testimony that the shift in approach by the aide had not diminished vigilance concerning food safety in the classroom. D.M. and S.C. ex rel. M.M. v. Howell Twp. Bd. of Educ., OAL Dkt. No. EDS 4324-08, 2008 N.J. AGEN LEXIS 349 (June 2, 2008).

Student's failure to pass six subjects rendered him ineligible to participate in school musical in which he played the lead role; student (classified as Specific Learning Disability) was not entitled to emergent relief notwithstanding his mother's claim that school acted arbitrarily when deciding to prevent student from perfonning in the musical. School regulations were clear and student failed classes due to his failure to do his homework, not due to school's failure to abide by student's IEP—school provided modifications and accommodations required; specifically, evidence existed that school monitored student's progress and provided him extra time to complete his assignments. A.P. ex rel. J.T. v. Fair Lawn Bd. of Educ., OAL Dkt. No. EDU 3670-08, 2008 N.J. AGEN LEXIS 207, Emergent Relief Decision (March 25, 2008).

Emergency relief denied concerning high school senior's ineligibility to participate as lead in the school musical dne to his failing two courses; no evidence existed that the school failed to provide the inodifications and accommodations required in his IEP, and the reason the student failed his science and history classes was becanse he failed to do his homework. A.P. ex rel. J.T. v. Fair Lawn Bd. of Educ., OAL DKT. NO. EDS 3669-08, 2008 N.J. AGEN LEXIS 204, Final Decision (March 25, 2008).

Mother of a 19-year-old student with several disabilities, including Down syndrome, autism, and epilepsy was not entitled to emergency relief because there was an obvious dispute between the parties concerning the adequacy of the student's out of district placement and resolution of the dispute required consideration of fact and opinion evidence in a plenary proceeding; additionally, even the mother's expert opined that compensatory education was a possibility, which refuted the idea that failure to grant relief would result in irreparable harm. L.K. ex rel. A.K. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 899-08, 2008 N.J. AGEN LEXIS 164, Decision on Application for Emergency Relief (March 10, 2008).

In a dispute between two municipalities within a county over the amount of tuition and credits that were owed between the municipalities over multiple school years, the municipalities could not expect a dispositive ruling from the County Superintendent after they submitted the disputes to mediation and mediation proved to be unsuccessful. Bd. of Educ. of the Borough of Mountainside, Union Cnty. v. Bd. of Educ. of the Twp. of Berkley Heights, Union Cnty., OAL Dkt. NO. EDU 9700-06, 2008 N.J. AGEN LEXIS 1504, Final Decision (January 17, 2008).

Parents of a severely autistic 8-year-old student were not entitled to emergent relief where the parties agreed that the student needed home training and the district was actively seeking a replacement for the home trainer who quit; there was no evidence of recalcitrance, and compensatory education was available for time lost. J.B. ex rel. M.B. v. Ocean Twp. Bd. of Educ., OAL Dkt. No. EDS 8974-05, 2005 N.J. AGEN LEXIS 932, Decision Denying Emergent Relief (December 27, 2007).

Parents' emergency request for temporary placement of twin daughters requiring speech and language services in a sixth grade mainstream environment with appropriate support was denied where there was no evidence that either child would suffer irreparable educational harm if not placed in the sixth grade during the pendency of the due process petitions. E.B. and M.B. ex rel. S.B. v. Alpine Bd. of Educ., OAL DKT. NO. EDS 12330-07 & EDS 12331-07, 2007 N.J. AGEN LEXIS 833, Emergent Relief Decision (December 21, 2007).

Parents' motion for emergent relief to include a behavior analyst in their autistic son's IEP was denied where they failed to show that, when the case was fully heard, they had a probability of prevailing on their underlying claim; there were substantial material issues of fact in the case because, although the teachers recognized the student's lack of social skills, they believed he made satisfactory educational progress to continue to participate in the general education setting. W.S. ex rel. W.S. v Metuchen Bd. of Educ., OAL Dkt. No. EDS 8820-07, 2007 N.J. AGEN LEXIS 742, Decision Denying Emergent Relief (November 15, 2007).

Parents of seven-year-old child who received special education due to blindness and cerebral palsy were granted a stay-put order continuing placement of their child at her school pending a determination as to her appropriate placement. The last IEP was still in effect at the time of the dispute over the proposed new IEP and the parents were under no obligation to demonstrate entitlement to emergent relief. S.A. ex rel. N.A. v. West Windsor-Plainsboro Bd. of Educ., OAL DKT. EDS 8094-07, 2007 N.J. AGEN LEXIS 650, Final Decision (September 27, 2007).

Parents of a 10-year-old learning disabled child were entitled to a "stay-put" order allowing the student to continue to attend a private school pending a plenary hearing because the last IEP was still in effect at the time of the dispute over his new IEP. When an IEP had yet to be implemented, the current educational placement was the one in place governing the education of the child at the time of the dispute. M.L. ex rel. R.H. v. Beverly City Bd. of Educ., OAL DKT. EDS 6657-07, 2007 N.J. AGEN LEXIS 622, Final Decision (September 7, 2007).

Parents of a 13-year-old autistic child were granted a temporary order for a "stay put" of a one-on-one Applied Behavioral Analysis shadow to implement the child's behavior program pursuant to her IEP where the usual prereqnisites of injunctive relief, such as irreparable harm and a likelihood of prevailing on the merits of the underlying claim, were not required in an emergent relief hearing regarding a student's placement pending a due process hearing. E.B. ex rel. H.B. v. Glassboro Bd. of Educ., OAL DKT. EDS 6554-07, 2007 N.J. AGEN LEXIS 714, Final Decision (August 23, 2007).

Emergent relief request was granted involving the services to be provided by an identified autism expert for a certain period pursuant to a child's Individualized education program (IEP) to provide for the appropriate services for the child and to avoid the specter of substantial potential of regression. Although there appeared to have been an agreement about the projected and anticipated reducing role of the expert during the course of the academic year and as part of the IEP created for that purpose, a break in services would occur in the delivery of services if they were not so provided by this expert and irreparable harm would occur if the requested relief was not granted. F.M. ex rel E.M., OAL DKT. NO. EDS04900-07, 2007 N.J. AGEN LEXIS 1270, Emergent Relief Decision (July 13, 2007).

Request for an emergency order amending student's IEP to provide for an extended school year was denied where the parent failed to meet the standards of N.J.A.C. 1:6A-12.1 and could not demonstrate that he could prevail on the claim; student had successfully completed self-contained eighth-grade class. H.P. ex rel. W.P. v. Cherry Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 4662-07, 2007 N.J. AGEN LEXIS 441, Final Decision (July 3, 2007).

Emergency relief for twelfth-grade student to participate in the processional on graduation day was denied, where the student had been placed in the Alternative Education Program six times during the school year based on his discipline report and was failing English; parent failed to show that the board acted arbitrarily and outside the scope of its discretionary authority in barring the student's participation. M.H. ex rel. G.S. v. Deptford Twp. Bd. of Educ., OAL Dkt. No. EDS 4282-07, 2007 N.J. AGEN LEXIS 408, Final Decision (June 12, 2007).

High school student with lengthy disciplinary history, who was classified as emotionally disturbed, was denied an emergency order permitting him to receive his diploma during graduation ceremonies and attend the senior prom; school board's disciplinary policy permitted it to rescind all graduation-related privileges for misconduct and the policy was uniformly enforced. T.S. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 4113-07, 2007 N.J. AGEN LEXIS 284, Final Decision (May 25, 2007).

Where a student, who had been in the school district for two years, was failing and had presented behavioral problems, the school district was entitled to emergency relief requiring psychiatric, psychological, educational, social, and speech and language assessments, and ordering the student's parents to cooperate. Edison Twp. Bd. of Educ. v. M.B. and P.B. ex rel. M.B., OAL DKT. NO. EDS 2319-07, 2007 N.J. AGEN LEXIS 181, Final Decision (April 11, 2007).

Parent of a 13-year-old severely autistic child with epilepsy was unsuccessful in seeking emergency relief for an interim residential placement because, although the district agreed that in light of the student's significant behavioral needs and constant need for supervision that a residential placement would be investigated, the parent's fear of losing a spot at a particular school was not "irreparable harm" where there was no clear showing that the school was the only appropriate placement available. M.L. ex rel. R.L. v. Marlboro Twp. Bd. of Educ., OAL DKT. EDS 631-07, 2007 N.J. AGEN LEXIS 120, Final Decision (March 14, 2007).

Parents of a disabled child were not entitled to an emergency stay-put order to keep their child in a private out-of-district school that had dismissed their child for behavioral issues where they failed to demonstrate irrevocable or irreparable harm if their request was not granted and where the record revealed that the student expressed suicidal ideations at the notion of being forced to stay at the school. J.R. ex rel. T.R. v. Somerville Borough Bd. of Educ., OAL DKT. EDS 8134-06, 2006 N.J. AGEN LEXIS 893, Final Decision (October 18, 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).

Emergency relief granted, ordering the return of a communication impaired seventh-grade student to middle school after he was involved in an incident in which students were running in the hallways, causing a teacher to fall down; parent satisfied all four prongs of the test under N.J.A.C. 1:6A-12.1, where the student would suffer irreparable harm if not permitted to return, he had a legal right to attend school and receive a FAPE, there was a substantial likelihood that the penalty against the student was excessive, given the student's uncertain role in the incident, the lack of intent to hurt anyone, and the five-day suspension to another student acting in an identical manner, and more harm would result to the student than the district if the relief was not granted. T.G. ex rel. C.R. v. Mount Laurel Twp. Bd. of Educ., OAL DKT. NO. EDS 2878-06, 2006 N.J. AGEN LEXIS 437, Final Decision (May 19, 2006).

Emergent relief granted for one hour of social skills training per week as part of the interim home instruction being offered a 13-year-old student, whose parent had withdrawn him from an out-of-district placement due to alleged use of physical restraint; other issues necessitated a full hearing. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Requirements of N.J.A.C. 1:6A-12 must be read in the conjunctive and not the disjunctive; if a petitioner fails to meet the criteria of one of the four enumerated considerations, the request for emergency relief must be denied. R.K. ex rel. S.K. v. Medford Twp. Bd. of Educ., OAL DKT. NO. EDS 2145-06, 2006 N.J. AGEN LEXIS 259, Emergent Relief Decision (March 31, 2006).

Parents who songht an emergency order terminating the use of a helmet on their six-year-old autistic son at school were denied relief where they failed to establish irreparable harm. D.B. ex rel. C.B. v. Bernards Twp. Bd. of Educ., OAL Dkt. No. EDS 412-06, 2006 N.J. AGEN LEXIS 240, Final Decision on Emergency Relief (February 23, 2006).

Parents failed to satisfy all of the criteria of N.J.A.C. 1:6A-12.1(e) for the issuance of an emergency relief order in their bid for a "stay put" order that would maintain their child's status as an out-of-district tuition student at a high school where letters between the school and the parents did not amount to a contractual agreement giving rise to any obligation on the part of the high school to accept the student for any subsequent year. A.E. and S.E. ex rel. A.E. v. Englewood Cliffs Bd. of Educ., OAL DKT. NO. EDS 09756-05, 2005 N.J. AGEN LEXIS 488, Final Decision (August 30, 2005).

Child's need for immediate placement in private school warranted emergency relief. J.G. v. Franklin Township Board of Education, 97 N.J.A.R.2d (EDS) 13.

Child's grade placement was not issue subject to grant of emergency relief. T.R. v. Mt. Olive Board of Education, 96 N.J.A.R.2d (EDS) 125.

Emergency relief was inappropriate remedy for student denied access to educational program based on allegation of theft. T.S. v. Lenape Regional High School District Board of Education, 96 N.J.A.R.2d (EDS) 122.

Emergency relief request denied when change of classroom location was found not to constitute change of program. C.M. v. Elizabeth Board of Education, 96 N.J.A.R.2d (EDS) 75.

Emergency implementation of home schooling plan provided satisfactory interim education for mentally handicapped student during pendency of mediation process. M.F. v. Toms River Regional Board of Education, 96 N.J.A.R.2d (EDS) 67.

Emergency relief allowing classified student to participate in interscholastic sports denied when classified student making good academic progress without requested relief. N.W. v. Brick Township Board of Education, 96 N.J.A.R.2d (EDS) 36.

School board's request for emergency relief to implement special education services granted where reasonable probability of board prevailing on merits existed. Bergenfield Board of Education v. C.W., 96 N.J.A.R.2d (EDS) 19.

Emergency relief was not available to provide a sign-language interpreter to a hearing impaired student attending a private school while residing in district. M.S. v. Washington Township Board, 95 N.J.A.R.2d (EDS) 253.

Possible adjustment of computer program for multiply handicapped child's home use was more appropriately addressed by agency than by emergent relief. M.S. v. Mount Laurel Board, 95 N.J.A.R.2d (EDS) 220.

Adult classified special education student with disciplinary problems was precluded from attending Senior Prom. P.P. v. Westwood Board, 95 N.J.A.R.2d (EDS) 165.

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.

Home instruction pending out-of-district placement for disruptive emotionally disturbed student was necessary. Tinton Falls v. K.C., 95 N.J.A.R.2d (EDS) 96.

Harassment required removal from special education class and placement in comparable mainstream class. P.D. v. Hasbrouck Heights, 95 N.J.A.R.2d (EDS) 5.

Mother's request for emergency relief to allow her 18-year old son to attend senior graduation ceremonies denied. A.Y. v. Millville Board of Education, 94 N.J.A.R.2d (EDS) 132.

Denial of emergency relief; special education program provided by Board of Education was adequate. K.M.C. v. Clearview Regional Board of Education, 94 N.J.A.R.2d (EDS) 95.

Unresolved issue of domicile prevents grant of emergency petition for enrollment. R.R. v. Freehold Regional High School District, 94 N.J.A.R.2d (EDS) 38.

SUBCHAPTER 13. PREHEARING CONFERENCES

1:6A-13.1 Prehearing conferences

Prehearing conferences may be scheduled in special education hearings.

Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
Substituted "may" for "shall not".

SUBCHAPTER 14. CONDUCT OF CASES

1:6A-14.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) At the hearing, parents shall have the right to open the hearing to the public, and to have the child who is the subject of the hearing present.

(c) A verbatim record shall be made of the hearing.

(d) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

Amended by R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Deleted (c); redesignated (d)-(e) as (c)-(d).

Case Notes

Given the finding by an ALJ that a school district should not have suspended a special education student for "terroristic threats" because there was no proof offered to support the claims, his parents were entitled to an order expunging any reference thereto made in the student's records or any other records maintained by the district. C.H. ex rel. M.H. v. Salem City Bd. of Educ., OAL DKT. NO. EDU 01733-16, 2017 N.J. AGEN LEXIS 361, Initial Decision (May 31, 2017).

Parent failed to meet her burden of proof by showing through a preponderance of credible evidence that her 10-year-old autistic son was entitled to compensatory education in the form of an additional seven hours a week of Applied Behavior Analysis where the parent's expert, though advised of the issue she was being retained to give an opinion, failed to include in her report or addendum a recommendation of an additional seven hours of ABA home therapy. S.J.B. ex rel. S.B. v. Haddonfield Borough Bd. of Educ., OAL DKT. EDS 6842-03, Final Decision (December 19, 2005).

1:6A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

1. At the request of a board of education or public agency if the board of education or public agency maintains that it is dangerous for the child to be in the current placement; or

2. At the request of a parent if:

i. The parent disagrees with the determination that the pupil's behavior in violating school rules was not a manifestation of the pupil's disability; or

ii. The parent disagrees with an order of school personnel removing a pupil with a disability from the pupil's current placement for more than 10 days or a series of removals that constitute a change in placement pursuant to 34 CFR 300.536 for a violation of school rules.

(b) Upon receipt of a request for an expedited hearing that meets the requirements of (a) above, the representative of the Department of Education shall contact the parties and the Clerk to:

1. Determine whether both parties request mediation;

2. If both parties request mediation, schedule the dates for the mediation and for the hearing; and

3. If mediation is not requested, schedule dates for the hearing.

(c) The hearing date for the expedited hearing shall be conducted within 20 school days of the hearing request.

(d) In an expedited hearing:

1. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 10 school days of the completion of the hearing.

(e) In an expedited hearing pursuant to (a)1 and 2ii above, the judge may:

1. Return the child with a disability to the placement from which the child was removed if the judge determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or

2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 calendar days if the judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(f) Placement in an interim alternative placement may not be longer than 45 calendar days. The procedures set forth in this section for such placement may be repeated as necessary.

New Rule, R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Former N.J.A.C. 1:6A-14.2, Interpreters, recodified to N.J.A.C. 1:6A-14.3.
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (a)1, deleted "during the pendency of due process proceedings" following "placement"; in (a)2ii, substituted "300.536" for "300.519"; in the introductory paragraph of (b), substituted "contact" for ", through telephone conference call to" and "the Clerk to" for "to the Clerk"; in (c), substituted "conducted within 20 school days" for "no later than 10 days from the date", and deleted the last sentence; deleted former (d)1; recodified former (d)2 as (d)1; in (d)1, substituted "10 school days of the completion of the hearing" for "45 days from the date of the hearing request" and deleted the last sentence; in the introductory paragraph of (e), deleted "order placement of the pupil in an appropriate interim alternative educational setting if the judge" following "May"; deleted former (e)1, (e)2, (e)3, (e)4 and the former introductory paragraph of (f); recodified former (f)1 and (f)2 as (e)1 and (e)2; recodified former (g) as (f); and in (f), inserted "calendar".

Case Notes

Order by a city board of education removing a disabled student from his high school and placing him in an "alternative interim placement" for having allegedly made "terroristic threats" was unlawful. The "threats" were contained in a rap song that the student wrote in a journal and that a teacher discovered when reviewing the journal in connection with a review of the student's work. There was no basis for the claim that the lyrics were properly construed as a threat to commit a crime of violence as they were not directed toward any individual or facility and the student did not share them with anyone. Because the board did not prove either any special circumstance for the removal of the student inasmuch as his conduct has not been determined to be a result of his disability or that maintaining the student's current placement was substantially likely to result in injury, the order of removal was unlawful. C.H. ex rel. M.H. v. Salem City Bd. of Educ., OAL DKT. NO. EDS 01159-16, 2015 N.J. AGEN LEXIS 775, Initial Decision (March 1, 2015).

Board of education was not ordered to grant a high school diploma to student who suffered from irritable bowel syndrome where he had not received the required 130 credit hours for his senior year. By denying the request for a diploma prior to his completion of 130 credit hours, irreparable harm would not be caused to the student since the diploma would be grauted to him upon the completion of four additional courses; the case law was clear that, without meeting the minimum credit requirements set forth by the board of education, the student had no right to a diploma; and the interest of the board in maintaining its minimum credit requirements was extremely significant for, without being able to enforce its minimum regulations for academic achievement, the board would be unable to effectively educate students. B.M. ex rel. A.M. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 4717-08, 2008 N.J. AGEN LEXIS 489, Emergent Relief Final Decision (June 18, 2008).

1:6A-14.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

Recodified from N.J.A.C. 1:6A-14.2 by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Former N.J.A.C. 1:6A-14.3, Independent educational evaluatiou, recodified to N.J.A.C. 1:6A-14.4.

1:6A-14.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6A:14 by an appropriately certified or licensed professional examiner(s) who is not employed by the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 CFR 300.502)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

Recodified from N.J.A.C. 1:6A-14.3 by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Former N.J.A.C. 1:6A-14.4, Transcripts, recodified to N.J.A.C. 1:6A-14.5.
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (a), substituted "6A:14" for "6:28-1".
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (a), deleted "and does not routinely provide evaluations for" following "employed by", and substituted "CFR 300.502" for "C.F.R. 300.503".

1:6A-14.5 Transcripts

(a) In addition to any stenographic recording, each hearing shall be sound recorded. A parent may receive a copy of the sound recording at no cost by making a request to the Clerk.

(b) A parent may obtain a transcript of any hearing pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs. A board of education may arrange to obtain a transcript by contacting the Clerk.

New Rule, R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Recodified from N.J.A.C. 1:6A-14.4 and amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Rewrote (b).
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (a), deleted "by tape recording" following "recorded", and substituted "sound" for "tape"; and in (b), substituted "A parent may obtain a transcript" for "Transcripts", deleted "may be obtained" following "hearing", and inserted the second sentence.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISION AND APPEAL

1:6A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 1:6A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days after the expiration of the 30-day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c).

Amended by R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Revised text.
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Substituted "after the expiration of the 30-day period under 34 CFR 300.510(b), or the adjusted time periods described in 34 CFR 300.510(c)" for "from the date of the hearing request".

1:6A-18.2 Confidentiality

(a) In a written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence pursuant to Federal regulations, 34 CFR 300.610, at the Office of Special Education Programs.

Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
Rewrote (b).
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
In (b), substituted "300.610," for "300.500 et seq.".
Petition for Rulemaking.
See: 47 N.J.R. 1350(a), 2004(a), 2676(a).

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C. § 1415(i)(2).

Administrative correction: 20 U.S.C.A. 1415(e)(3) changed to 20 U.S.C.A. 1415(e)(2).
See: 22 N.J.R. 3478(a).
Amended by R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Revised (b).
Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
In (b), substituted references to the Office of Special Education Programs for references to the Office of Administrative Law throughout.
Administrative correction.
See: 33 N.J.R. 1209(a).
Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Deleted designation (a); deleted "A." following "U.S.C."; and deleted (b) and (c).

Case Notes

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

1:6A-18.4 Stay of implementation

Unless the parties otherwise agree or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 CFR 300.514.

Amended by R.2000 d.94, effective March 6, 2000.
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).
In (a), inserted "or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2" following "agree".
Amended by R.2005 d.261, effective August 15, 2005.
See: 37 N.J.R. 559(a), 37 N.J.R. 3033(a).
In (a), substituted "300.514" for "300.513".

Amended by R.2010 d.275, effective December 6, 2010.
See: 42 N.J.R. 1763(a), 42 N.J.R. 2951(a).
Deleted designation (a); substituted "CFR" for "C.F.R."; and deleted (b).

Case Notes

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. M.H. v. East Windsor Regional School District, 9 N.J.A.R. 159 (1986).

1:6A-18.5 (Reserved)

Repealed by R.1992 d.331, effective September 8, 1992.
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).
Section was "Motion to reopen hearing".