

# **N.J.A.C. 6A:14, SPECIAL EDUCATION**

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## CHAPTER 14. SPECIAL EDUCATION

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 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 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.

**6A:14-1.2 District eligibility for assistance under IDEA Part B**

- (a) For the purposes of this section, each district board of education and State agency program that acts as a district board of education is eligible for assistance under IDEA Part B for a fiscal year by having a special education plan that demonstrates to the satisfaction of the Department of Education through the county office of education that it meets the conditions of (b) through (f) below.
  - 1. If a district board of education has on file with the Department of Education through the county office of education a plan consisting of policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect before December 3, 2004, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.

2. Amendments to policies, procedures and programs shall be made according to the following:
  - i. The approved policies, procedures and programs submitted by a district board of education shall remain in effect until the county office approves such amendments as the district board of education deems necessary; or
  - ii. If the provisions of the IDEA Amendments of 2004 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.
- (b) Each district board of education shall have policies, procedures, and programs approved by the Department of Education through the county office of education that are in effect to ensure the following:
  1. A free appropriate public education according to N.J.A.C. 6A:14-1.1(b)1 is available to all students with disabilities between the ages of three and 21, including students with disabilities that have been suspended or expelled from school;
  2. Full educational opportunity to all students with disabilities is provided;
  3. All students with disabilities, who are in need of special education and related services, including students with disabilities attending nonpublic schools, regardless of the severity of their disabilities, are located, identified and evaluated according to N.J.A.C. 6A:14-3.3;
  4. Homeless students are located, identified and evaluated and provided special education and related services in accordance with the IDEA, including the

appointment of a surrogate parent for unaccompanied homeless youths as defined in 42 U.S.C. §§ 11431 et seq.;

5. An individualized education program is developed, reviewed and as appropriate, revised according to N.J.A.C. 6A:14-3.6 and 3.7;
6. To the maximum extent appropriate students with disabilities are educated in the least restrictive environment according to N.J.A.C. 6A:14-4.2;
7. Students with disabilities are afforded the procedural safeguards required by N.J.A.C. 6A:14-2;
8. Students with disabilities are evaluated according to N.J.A.C. 6A:14-2.5 and 3.4;
9. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6A:32;
10. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and that by the student's third birthday an individualized education program has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);
11. Provision is made for the participation of students with disabilities who are placed by their parents in nonpublic schools according to N.J.A.C. 6A:14-6.1 and 6.2;
12. Students with disabilities who are placed in private schools by the district board of education, are provided special education and related services at no cost to their parents;
13. All personnel serving students with disabilities are highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law;

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 Statewide 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 Developmentally Disabled Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services;
  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; and
  19. A plan is in effect to establish stability in special education programming. The plan shall take into account the consistency of the location, curriculum, and staffing in the provision of special education services.
- (c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through 19 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.

### **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.

“Dyslexia” means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"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 the 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.

## **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).

### **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 Child Protection and Permanency (DCP&P) in the Department of Children and Families 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 DCP&P 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.

### **6A:14-2.3 Parental consent, notice, participation and meetings**

- (a) Consent shall be obtained:
1. Prior to conducting any assessment as part of an initial evaluation;
  2. Prior to implementation of the initial IEP resulting from (a)1 above;
  3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond;
  4. Prior to the release of student records according to N.J.A.C. 6A:32;
  5. Each time a district board of education seeks to access private insurance covering a student with a disability;
  6. Prior to the first time a district board of education seeks to access a child's or parent's public benefits or insurance covering a student with a disability in accordance with 34 CFR 154(d);
  7. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;
  8. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and
  9. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).

- (b) For a ward of the State, a district board of education must make reasonable efforts to obtain parental consent for an initial evaluation. If, after reasonable efforts, the parent cannot be found, or parental rights have been terminated, or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed, parental consent need not be obtained for an initial evaluation.
- (c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. For those areas set forth in (a)1, 3 and 4 above, if a parent refuses to provide consent and the district and the parent have not agreed to other action, the district may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.
- (d) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.
- (e) Written consent may be revoked by the parent, in writing, at any time.
1. Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.

2. If consent for special education and related services is revoked by the parent, the district board of education shall not file for a due process hearing or otherwise institute any legal proceeding seeking to overturn the parent's determination.
  3. When a parent revokes consent for special education and related services, the school district shall provide written notice to the parent within 10 days of receipt of the written revocation of consent. The school district shall cease providing special education and related services to the student after the expiration of the 15-calendar-day notice period unless the parent rescinds the revocation of consent, in writing, within that time period.
  4. If a parent revokes consent for special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents revoked consent for implementation of services.
- (f) Written notice which meets the requirements of this section shall be provided to the parent when a district board of education:
1. Proposes to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student; or
  2. Declines to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.

(g) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

1. A description of the action proposed or denied by the district board of education;
2. An explanation of why it is taking such action;
3. A description of any options the district board of education considered and the reasons why those options were rejected;
4. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action;
5. A description of any other factors that are relevant to the proposal or refusal by the district board of education;
6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and
7. In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:
  - i. Upon referral for an initial evaluation;
  - ii. Upon request by a parent;
  - iii. When a request for a due process hearing is submitted to the Department of Education;
  - iv. When a request for a complaint investigation is submitted to the Department; and

- v. When a student is removed for disciplinary reasons and the removal constitutes a change in placement as described in N.J.A.C. 6A:14-2.8.
- (h) Written notice according to (g) above shall be provided to the parent as follows:
- 1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;
  - 2. The district of board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;
  - 3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:
    - i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or
    - ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).
  - 4. The district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the school district determine that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:
    - i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (g) above.

Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.

ii. During the pendency of mediation or due process related to the disciplinary action the student shall be placed in accordance with 20 U.S.C. § 1415(k) and N.J.A.C. 6A:14-2.8.

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding school holidays but not summer vacation.

i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination made within 20 calendar days, excluding school holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.

(i) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (g) above, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14), and due process hearing rules (N.J.A.C. 1:6A).

(j) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student.

(k) Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for notice of a meeting according to (g)7ii above and (k)3 through 5 below are met.

1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:
  - i. The parent;
  - ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;
  - iii. The student, where appropriate;
  - iv. At least one child study team member who participated in the evaluation;
  - v. The case manager;
  - vi. Other appropriate individuals at the discretion of the parent or school district; and
  - vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the school principal or designee if they choose to participate.
2. Meetings of the IEP team shall include the following participants:
  - i. The parent;
  - ii. Not less than one general education teacher of the student, if the student is or may be participating in the general education classroom;
    - (1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;
    - (2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;

- (3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
  - (4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;
- iii. Not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student;
  - (1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;
- iv. At least one child study team member who can interpret the instructional implications of evaluation results;
- v. The case manager;
- vi. A representative of the responsible district who:
  - (1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
  - (2) Is knowledgeable about the general education curriculum;
  - (3) Is knowledgeable about the availability of resources of the district board of education; and
  - (4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;

- vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
    - (1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;
  - viii. The student where appropriate;
  - ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and
  - x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.
3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.
  4. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent(s) shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.
  5. Notice of meetings shall indicate the purpose, time, location and participants.
    - i. The notice of an IEP meeting shall inform the parents of the provisions in (k)2vii and (k)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.
    - ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:

- (1) A purpose of the meeting will be the development of the transition services of the student; and
    - (2) The school district will invite the student;
  - iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:
    - (1) Indicate that a purpose of the meeting is the consideration of transition services for the student;
    - (2) Indicate that the school will invite the student; and
    - (3) Identify any other agency that will be invited to send a representative.
6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.
7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including, but not limited to:
  - i. Detailed records of telephone calls made or attempted and the results of those calls;
  - ii. Copies of correspondence sent to the parents and any responses received; and
  - iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.
  9. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
    - i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
  10. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
    - i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.
    - ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
- (l) The following activities shall not be considered a meeting that requires parental participation:

1. Informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and
  2. Preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.
1. An adult student shall be given notice and shall participate in meetings according to (a) through (k) above. The district board of education or the adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the adult student.
  2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for release of records of an adult student shall be obtained from the adult student.
  3. The district board of education shall provide any notice required under this chapter to the adult student and the parent.
  4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a

due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.

- (n) The New Jersey Department of Education shall disseminate the procedural safeguards statement to parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies.

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

- (a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly not feasible to do so.
  - 1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent.
- (b) If the native language is not a written language, the district board of education shall take steps to ensure that:
  - 1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - 2. That the parent understands the content of the notice; and
  - 3. There is written documentation that the requirements of (b)1 and 2 above have been met.

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

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

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:
    - i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and
    - ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;
  2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and
  3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (b) Each district board of education shall ensure:
1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:
    - i. Are selected and administered so as not to be racially or culturally discriminatory; and
    - ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and
    - iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;

2. Any standardized tests that are administered:
    - i. Have been validated for the purpose(s) for which they are administered;  
and
    - ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;
  3. The student is assessed in all areas of suspected disability;
  4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;
  5. Tests are selected, administered and interpreted so that when a student has sensory, manual or communication impairments, the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;
  6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability; and
  7. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category.
- (c) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The

request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.

1. Such independent evaluation(s) shall be provided at no cost to the parent unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.
  - i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or
  - ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.
2. Any independent evaluation purchased at public expense shall:
  - i. Be conducted according to N.J.A.C. 6A:14-3.4; and
  - ii. Be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved under N.J.A.C. 6A:14-5, or private practitioner, who is appropriately certified and/or licensed, where a license is required.
3. An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).
4. Any independent evaluation submitted to the district, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.
5. If a parent requests an independent evaluation, the school district may ask the parent to explain why he or she objects to the school district's evaluation.

However, the school district shall not require such an explanation and the school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district's evaluation.

6. For any independent evaluation, whether purchased at public or private expense, the school district shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.
7. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

#### **6A:14-2.6 Mediation**

- (a) Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 years when there is a disagreement regarding identification, evaluation, classification, educational placement or the provision of a free, appropriate public education.
  1. A request for mediation shall not be used to deny or delay the right to request a due process hearing.
  2. Mediation may be agreed to by a parent and school district in place of the resolution meeting described in N.J.A.C. 6A:14-2.7.
- (b) The district board of education may establish procedures that require a parent, who chooses not to use the mediation process, to meet with a State mediator to discuss the benefits of mediation. This meeting may take place by telephone or through the use of electronic conference equipment.

- (c) Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of students with disabilities or with respect to the student that is the subject of the mediation.
- (d) Mediation is available from the Department of Education at the State level through the Office of Special Education Programs. Mediation shall be provided as follows:
1. To initiate mediation through the Office of Special Education Programs, a written request shall be submitted to the State Director of the Office of Special Education Programs;
  2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the student's name, student's address, student's date of birth, name of the school the student is attending the issue(s) in dispute and the relief sought;
  3. A mediation conference consistent with New Jersey law and rules shall be scheduled within 15 calendar days after receipt of a written request and completed within 30 days of the date of the request. At the mediation conference, issues shall be discussed and options for resolution shall be explored;
  4. The role of the mediator is to:
    - i. Facilitate communication between the parties in an impartial manner;
    - ii. Chair the meeting;
    - iii. Assist the parties in reaching an agreement, and, if an agreement is reached, the mediator shall prepare the document setting forth the agreement of the parties at the mediation conference;
    - iv. Assure that the agreement prepared by the mediator complies with Federal and State law and regulation;

- v. When appropriate, adjourn the mediation to a date certain, but not more than 45 days from the date of the request for a mediation conference, at the request of the parties to obtain additional information or explore options; and
  - vi. Terminate mediation if in the mediator's judgment the parties are not making progress toward resolving the issue(s) in dispute;
5. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute;
  6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement which shall be prepared by the mediator at the mediation conference and signed by each party. Mediation agreements shall not address special education or related services for more than one school year. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation, including audio recording, shall be made;
  7. Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings;
  8. Prior to commencement of the mediation conference, the mediator may, at his or her discretion and upon request of a party, require that the parties sign a confidentiality pledge to ensure that all discussions that occur during the mediation remain confidential;
  9. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation;
  10. Pending the outcome of mediation, no change shall be made to the student's classification, program or placement, unless both parties agree, or emergency

relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7 as provided in 20 U.S.C. § 1415(k) as amended and supplemented (see chapter Appendix A); and

11. Signed agreements resulting from mediation conducted according to this section are binding on the parties. If either party fails to comply with any provision of the agreement, either party may seek enforcement of the agreement in a court of appropriate jurisdiction. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement provisions addressing the student's program or services. The request shall be filed no later than the 90<sup>th</sup> calendar day from the date that the action set forth in the 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.

## **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)11;
- 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 90<sup>th</sup> 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 of the parties, enforcement may not be sought with respect to that part of the decision.

- (u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. § 1415(k)4 as amended and supplemented. (See chapter Appendix A.)
  - 1. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the district board of education and the parents for the remainder of any court proceedings.
  
- (v) Any party may appeal the decision of an administrative law judge in a due process hearing.
  - 1. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance the final decision. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergency relief or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitations period for filing appeals, and are instead subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.
  
- (w) Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, shall be processed in accordance with this section, except as follows:
  - 1. There shall be no resolution period or opportunity for a resolution meeting pursuant to (h) above with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether

the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and

2. The provisions of (d), (e) and (f) above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

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

- (a) For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as nondisabled students. However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).
  1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.
  2. The district board of education is not required by 20 U.S.C. §§1400 et seq. or this chapter to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.

- (b) School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct.
- (c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:
  - 1. The removal is for more than 10 consecutive school days; or
  - 2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to one another.
    - i. School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.
- (d) Disciplinary action initiated by a district board of education which involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k), as amended and supplemented. (See chapter Appendix A.) However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415(k) shall be for a period of no more than 45 calendar days.
- (e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

1. When it is determined that a series of short-term removals is not a change of placement, school officials, in consultation with the student's special education teacher and case manager shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
  2. When a removal constitutes a change of placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
- (f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury under 20 U.S.C. § 1415(k) and its implementing regulations, at 34 CFR §§ 300.1 et seq., or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. § 1415(k) and its implementing regulations, at 34 CFR §§ 300.1 et seq., the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. § 1415(k) and its implementing regulations, at 34 CFR §§ 300.1 et seq., incorporated herein by reference. However, the period of removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. §1415(k) shall be for a period of no more than 45 calendar days.

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

- (a) All student records shall be maintained according to N.J.A.C. 6A:32.
- (b) The parent, adult student or their designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of

education under N.J.A.C. 6A:32 without unnecessary delay and before any meeting regarding the IEP.

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

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

- (a) Except as provided in N.J.A.C. 6A:14-6.1(a), the district board of education shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district made available a free, appropriate public education and the parents elected to enroll the student in a nonpublic school, an early childhood program, or an approved private school for students with disabilities.
- (b) If the parents of a student with a disability, who previously received special education and related services from the district of residence, enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of or referral by the district board of education, an administrative law judge may require the district to reimburse the parents for the cost of that enrollment if the administrative law judge finds that the district had not made a free, appropriate public education available to that student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge according to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if it does not meet the standards that apply to the education provided by the district board of education.

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

1. If at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district;
2. At least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;
3. If prior to the parents' removal of the student from the public school, the district proposed a reevaluation of the student and provided notice according to N.J.A.C. 6A:14-2.3(g) and (h) but the parents did not make the student available for such evaluation; or
4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

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

1. The parent is illiterate and cannot write in English;
2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;
3. The school prevented the parent from providing such notice; or

4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

### **SUBCHAPTER 3. SERVICES**

#### **6A:14-3.1 General requirements**

- (a) Child study team members, specialists in the area of disabilities, school personnel and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the individualized education program, and placement.
- (b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant and a school social worker. All child study team members shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available to provide all needed services during the hours students are in attendance.
  1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the New Jersey Department of Education.
- (c) Specialists in the area of disability include, but are not be limited to, child study team members, as well as speech-language specialists, occupational therapists, physical therapists, audiologists, school nurses, advance practice nurses and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational certificate and a license are required to carry out activities under this chapter, the professional shall be appropriately certified and licensed.

- (d) Child study team members and, to the extent appropriate, specialists in the area of disability:
1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;
  2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;
  3. May provide services to the educational staff with regard to techniques, materials and programs. Services include, but are not limited to, the following:
    - i. Consultation with school staff and parents;
    - ii. Training of school staff; and
    - iii. The design, implementation and evaluation of techniques addressing academic and behavioral difficulties;
  4. May deliver appropriate related services to students with disabilities;
  5. May provide preventive and support services to nondisabled students; and
  6. May participate on Intervention and Referral Services teams pursuant to N.J.A.C. 6A:16-8.

### **6A:14-3.2 Case manager**

- (a) A case manager shall be assigned to a student when it is determined that an initial evaluation shall be conducted. Child study team members or speech-language specialists when they act as members of the child study team shall be designated and serve as the case manager for each student with a disability.
- (b) The case manager shall coordinate the development, monitoring and evaluation of the effectiveness of the IEP. The case manager shall facilitate communication between home and school and shall coordinate the annual review and reevaluation process.

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

**6A:14-3.3 Location, referral and identification**

- (a) Each district board of education shall develop written procedures for students age three through 21, including students attending nonpublic schools located within the district regardless of where they reside, who reside within the local school district with respect to the location and referral of students who may have a disability due to physical, sensory, emotional, communication, cognitive or social difficulties.
1. The requirements of this section apply to highly mobile students with disabilities, such as migrant and homeless students, and to students who may have a disability even though they are advancing from grade to grade.
  2. The activities undertaken to locate nonpublic school students with disabilities shall be comparable to activities undertaken to locate public school students with disabilities. In addition, each district board of education shall consult with appropriate representatives of nonpublic school students on how to carry out these activities.
    - i. For preschool age students enrolled in early childhood programs, the child-find obligations, including evaluation for eligibility for special education and related services, shall be the responsibility of the district of residence of the parent of the student.

- ii. For nonpublic elementary or secondary school students, the child-find obligations shall be the responsibility of the district of attendance in accordance with N.J.A.C. 6A:14-6.1.
  3. The procedures shall include:
    - i. Utilizing strategies identified through the Intervention and Referral Services program according to N.J.A.C. 6A:16-8, as well as other general education strategies;
    - ii. Referral by instructional, administrative and other professional staff of the local school district, parents and state agencies, including the New Jersey Department of Education and agencies concerned with the welfare of students.
    - iii. Evaluation to determine eligibility for special education and related services; and/or
    - iv. Other educational action, as appropriate.
- (b) Interventions in the general education setting shall be provided to students exhibiting academic difficulties and shall be utilized, as appropriate, prior to referring a student for an evaluation of eligibility for special education and related services.
  1. Within Abbott districts, the system of assessment and interventions within general education programs according to N.J.A.C.6A:10A-3.1 shall be implemented for all students who have reading as their primary area of difficulty.
- (c) The staff of the general education program shall maintain written documentation, including data setting forth the type of interventions utilized, the frequency and duration of each intervention, and the effectiveness of each intervention.
  1. When it is determined through analysis of relevant documentation and data concerning each intervention utilized that interventions in the general education program have not adequately addressed the educational difficulties, and it is

believed that the student may have a disability, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.

2. A determination whether or not to conduct an evaluation shall be made in accordance with (e) below.
- (d) A direct referral to the child study team may be made when it can be documented that the nature of the student's educational problem(s) is such that evaluation to determine eligibility for special education services under this chapter is warranted without delay.
1. The parent may make a written request for an evaluation to determine eligibility for services under this chapter. Such a request shall be considered a referral and shall be forwarded without delay to the child study team for consideration.
- (e) When a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent and the regular education teacher of the student who is knowledgeable about 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 be convened within 20 calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation, according to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), which includes a request for consent to evaluate, if an evaluation will be conducted, according to N.J.A.C. 6A:14-2.3.
1. To facilitate the transition from early intervention to preschool, a child study team member of the district board of education shall participate in the preschool transition planning conference arranged by the designated service coordinator

from the early intervention system. The district representative at the transition planning conference shall:

- i. Review the Part C Early Intervention System Individualized Family Service Plan;
  - ii. Provide the parents written district registration requirements;
  - iii. Provide the parents written information on available district programs for preschool students, including options available for placement in general education classrooms; and
  - iv. Provide the parent a form to utilize to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility.
2. Preschoolers with disabilities shall have their IEPs implemented no later than age three. To assure that preschoolers with disabilities have their initial IEPs implemented no later than age three, a written request for initial evaluation shall be forwarded to the district at least 120 days prior to the preschooler attaining age three.
- i. For a child receiving Early Intervention System services, the form to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility shall be submitted to the district board of education with the request for initial evaluation.
3. When a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.

- i. If it is determined that a speech-language assessment will be conducted, it may be utilized as one of the two required assessments in N.J.A.C. 6A:14-3.4(f).
  4. For students ages five to 21, when the suspected disability includes a language disorder, the child study team, the parent, a speech-language specialist and the general 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 participate in the meeting to decide whether to evaluate and the nature and scope of the evaluation.
  5. For students ages five to 21, when the suspected disability is a disorder of voice, articulation and/or fluency only, the decision to evaluate and the determination of the nature and scope of the evaluation shall be according to (e) above, except that the meeting shall include the speech-language specialist, the parent and the general 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.
- (f) When it is determined that an evaluation for eligibility for services under this chapter is warranted, the student shall be considered identified as potentially a student with a disability. If the student is removed for disciplinary action, 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(k)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.)

#### **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 disability 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
  5. Beginning at age 14, or younger if appropriate, include assessment(s) to determine appropriate postsecondary outcomes.
- (g) When the suspected disability is a disorder of articulation, voice or fluency according to N.J.A.C. 6A:14-3.6(b), the speech-language specialist shall:
1. Meet with the parent and the student's general education teacher who is knowledgeable about the student's educational performance or, if there is no general education teacher, a general education teacher who is knowledgeable about the district's programs to review existing data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;
  2. Obtain consent to conduct the evaluation according to N.J.A.C. 6A:14-3.3(e)5;
  3. Conduct an assessment according to (f)1 through 4 above. The assessment shall include written information from the classroom teacher of the educational impact

created by the speech problem. Such assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (d) above; and

4. Prepare a written report of the results according to (h) below.

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

1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;
2. A statement regarding relevant behavior of the student, either reported or observed and the relationship of that behavior to the student's academic functioning;
3. If an assessment is not conducted under standard conditions, the extent to which it varied from standard conditions;
4. When a student is suspected of having a specific learning disability, the documentation of the determination of eligibility shall include a statement of:
  - i. Whether the student has a specific learning disability;
  - ii. The basis for making the determination;
  - iii. The relevant behavior noted during the observation;
  - iv. The relationship of that behavior to the student's academic performance;
  - v. Educationally relevant medical findings, if any;
  - vi. If a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;

- vii. The determination concerning the effects of environmental, cultural or economic disadvantage;
  - viii. Whether the student achieves commensurate with his or her age;
  - ix. If a response to scientifically based interventions methodology is utilized, the instructional strategies utilized and the student-centered data collected with respect to the student; and
  - x. Whether there are strengths or weaknesses, or both, in performance or achievement relative to intellectual development in one of the following areas that require special education and related services;
    - (1) Oral expression;
    - (2) Listening comprehension;
    - (3) Written expression;
    - (4) Basic reading skill;
    - (5) Reading fluency skills;
    - (6) Reading comprehension;
    - (7) Mathematics calculation; and
    - (8) Mathematics problem solving;
5. Additionally, each team member shall certify in writing whether his or her report is in accordance with the conclusion of eligibility of the student. If his or her report does not reflect the conclusion of eligibility, the team member must submit a separate statement presenting his or her conclusions; and
6. When a response to scientifically based interventions methodology is utilized to make the determination of whether the student has a specific learning disability, the district board of education shall:

- i. Ensure that such methodology includes scientifically based instruction by highly qualified instructors, and that multiple assessments of student progress are included in the evaluation of the student;
  - ii. Not be required to include more than the assessment conducted pursuant to the district's response to scientifically based intervention methodology in the evaluation of a student; and
  - iii. If the parent consents in writing, extend, as necessary, the time to complete an evaluation pursuant to (c) above.
- (i) When conducting an initial evaluation or reevaluation, the reports and assessments of child study team members or related services providers from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions or professionals in private practice may be submitted by the parents to the child study team for consideration. Each report and assessment shall be reviewed and considered by the child study team member or related services provider with relevant knowledge or expertise. A report or component thereof may be utilized as a required assessment, if the assessment has been conducted within one year of the evaluation and the child study team determines the report and assessment meet the requirements of (h) above.
- (j) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall transmit the summary to the child study team for the meeting according to (a) above to consider the need for a health appraisal or specialized medical evaluation.

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

- (a) When an initial evaluation is completed for a student age three through 21, a meeting according to N.J.A.C. 6A:14-2.3(k)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation and information that will be used for a determination of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described in N.J.A.C. 6A:14-2.3(k)1.
- (b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading, including the essential components of reading instruction, or math or due to limited English proficiency.
- (c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.
1. "Audiotorily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Audiotorily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

- i. "Deafness"--The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.
  - ii. "Hearing impairment"--An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.
2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.
3. "Intellectually disabled" means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:
  - i. "Mild intellectual disability" means a level of cognitive development and adaptive behavior in home, school, and community settings that are mildly below age expectations with respect to all of the following:

- (1) The quality and rate of learning;
  - (2) The use of symbols for the interpretation of information and the solution of problems; and
  - (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.
- ii. "Moderate intellectual disability" means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:
- (1) The ability to use symbols in the solution of problems of low complexity;
  - (2) The ability to function socially without direct and close supervision in home, school and community settings; and
  - (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.
- iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.
4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing

situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.

- i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.
  - ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).
5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:
- i. An inability to learn that cannot be explained by intellectual, sensory or health factors;
  - ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - iii. Inappropriate types of behaviors or feelings under normal circumstances;
  - iv. A general pervasive mood of unhappiness or depression; or
  - v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiply disabled" corresponds to "multiply handicapped" and "multiple disabilities," and means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities includes cognitively impaired-blindness, cognitively impaired-orthopedic impairment, etc. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiply disabled. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." Multiply disabled does not include deaf-blindness.
7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
8. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.
9. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia,

diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

10. "Preschool child with a disability" corresponds to preschool handicapped and means a child between the ages of three and five who either:
  - i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below, and requires special education and related services. When utilizing a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.
    - (1) Physical, including gross motor, fine motor and sensory (vision and hearing);
    - (2) Intellectual;
    - (3) Communication;
    - (4) Social and emotional; and
    - (5) Adaptive; or
  - ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.
11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.

12. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
  - i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:
    - (1) Basic reading skills;
    - (2) Reading comprehension;
    - (3) Oral expression;
    - (4) Listening comprehension;
    - (5) Mathematical calculation;
    - (6) Mathematical problem solving;
    - (7) Written expression; and
    - (8) Reading fluency.
  - ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.
  - iii. The term severe discrepancy does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.
  - iv. The district shall, if it utilizes the severe discrepancy methodology, adopt procedures that utilize a statistical formula and criteria for determining

severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

13. "Traumatic brain injury" corresponds to "neurologically impaired" and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
14. "Visually impaired" corresponds to "visually handicapped" and means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

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

- (a) "Eligible for speech-language services" means a speech and/or language disorder as follows:
  1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences or the influence of a foreign language, which adversely affects a student's educational performance; and/or
  2. A language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c)4 and the student requires speech-language services only.

- (b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(g). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:
1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.
  2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.
  3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.
- (c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(k)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting.
- (d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(k)2. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results and the service provider at the IEP meeting. The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve as the agency representative at the IEP meeting.

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

**6A:14-3.7 Individualized education program**

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.
  1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;
  2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
  3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and

4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.
- (b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14- 2.3(k)2 for students classified eligible for special education and related services or according to 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. Consider the consistency of the location of the services for students who are prone to regression due to frequent changes in location;
  5. 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;
  6. In the case of a student with limited English proficiency, consider the language needs of the student as related to the IEP;
  7. 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;
  8. Consider the communication needs of the student;

9. 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;
  10. 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;
  11. 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 Workforce Development and other agencies providing services for individuals with disabilities; and
  12. 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 aids 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)4 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 Workforce Development; and
  - iv. As appropriate, a statement of any needed interagency 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 needs, taking into account the student's strengths, preferences and interests. In addition to the above, transition services shall include:

- (1) Instruction;
  - (2) Related services;
  - (3) Community experiences;
  - (4) The development of employment and other post-school adult living objectives; and
  - (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;
13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;
  14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;
  15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;

16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and
  17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with nondisabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.
- (f) The IEP for the student classified as eligible for speech-language services shall include (e)1 through 8, 15, and 16 above. When appropriate, (e)11, 12, 13, and 14 above shall be included. The statement of the current academic and functional achievement in (e)1 above shall include a description of the student's status in speech-language performance and a description of how the student's disability affects the student's involvement and progress in the general curriculum. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.
- (g) If an agency other than the district board of education fails to provide the transition services included in the student's individualized education program, the district board of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.
- (h) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.

- (i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.
  - 1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.
  - 2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.
- (j) The IEP team shall review:
  - 1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
  - 2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;
  - 3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;
  - 4. The student's anticipated needs; or
  - 5. Other relevant matters.
- (k) For those students in a separate setting, the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement.
- (l) Signatures of those persons who participated in the meeting to develop the IEP shall be maintained and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.
- (m) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance

with this section. However, initial implementation of special education cannot occur until consent is obtained. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3.

### **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 conditions 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 student's 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 reevaluation 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).

### 6A:14-3.9 Related services

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

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers or guidance counselors.
2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.
4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.
  - i. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.
  - ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.

5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.
  6. Recreation shall be provided by certified school personnel.
  7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.
  8. Nursing services shall be provided as a related service only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the individualized education program of the child.
  9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.
  10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.
  11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.
  12. Other related services shall be provided as specified in the student's IEP.
- (b) School personnel may give advice to parents regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

#### **SUBCHAPTER 4. PROGRAMS AND INSTRUCTION**

##### **6A:14-4.1 General requirements**

- (a) Each district board of education shall provide educational programs and related services for students with disabilities required by the individualized education programs of those students for whom the district board of education is responsible.
- (b) A district board of education proposal to establish or eliminate special education programs or services shall be approved by the Department of Education through its county offices.
- (c) The length of the school day and the academic year of programs for students with disabilities, including preschoolers with disabilities, shall be at least as long as that established for nondisabled students. The IEP team may, in its discretion, alter the length of the school day based on the needs of the student.
- (d) District board of education operated special class programs for preschoolers with disabilities shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of student instruction, with the following exception:
  - 1. Preschool disabled classes operated by a district board of education shall operate at least as long as any district program for nondisabled preschoolers, but not less than 10 hours per week.
- (e) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county offices.
- (f) Physical education services, specially designed if necessary, shall be made available to every student with a disability age five through 21, including those students in separate facilities.
- (g) When a student with a disability transfers from one New Jersey school district to another or from an out-of-State school district to a New Jersey school district, the child study

team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.
  2. If the student transfers from an out-of-State district, the appropriate school district staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.
  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, nonacademic 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, and 14 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.
  - (m) When a student with a disability transfers from a nonpublic 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.

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

- (a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:
1. To the maximum extent appropriate, a student with a disability is educated with children who are not disabled;
  2. Special classes, separate schooling or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;
  3. A full continuum of alternative placements according to N.J.A.C. 6A:14- 4.3 is available to meet the needs of students with disabilities for special education and related services;
  4. Placement of a student with a disability is determined at least annually and, for a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered at least annually;
  5. Placement is based on his or her individualized education program;
  6. Placement is provided in appropriate educational settings as close to home as possible;

7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not a student with a disability;
  8. Consideration is given to:
    - i. Whether the student can be educated satisfactorily in a regular classroom with supplementary aids and services;
    - ii. A comparison of the benefits provided in a regular class and the benefits provided in a special education class; and
    - iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class;
  9. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;
  10. Placement in a program option is based on the individual needs of the student; and
  11. When determining the restrictiveness of a particular program option, such determinations are based solely on the amount of time a student with disabilities is educated outside the general education setting.
- (b) Each district board of education shall provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each district board of education shall ensure that each student with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate.

### **6A:14-4.3 Program options**

- (a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
1. Curricular or instructional modifications or specialized instructional strategies;
  2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
  3. Teacher aides;
  4. Related services;
  5. Integrated therapies;
  6. Consultation services; and
  7. In-class resource programs.
- (b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth below shall be available to meet the needs of the student. Alternative educational program options include placement in the following:
1. Single subject resource programs outside the general education class;
  2. A special class program in the student's local school district;
  3. A special education program in another local school district;
  4. A special education program in a vocational and technical school;
  5. A special education program in the following settings:
    - i. A county special services school district;
    - ii. An educational services commission;
    - iii. A jointure commission; and
    - iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;

6. A program operated by a department of New Jersey State government;
  7. A community rehabilitation program;
  8. A program in a hospital, convalescent center or other medical institution;
  9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through its county office;
  10. An accredited nonpublic school which is not specifically approved for the education of students with disabilities according to N.J.A.C. 6A:14-6.5;
  11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and
  12. An early intervention program (which is under contract with the Department of Health and Senior Services) in which the child has been enrolled for the balance of the school year in which the child turns age three.
- (c) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.
1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.
- (d) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a board of education according to the following:

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

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

- (a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:
  1. Speech-language services shall be given individually or in groups.
    - i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.
  2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

#### **6A:14-4.5 Program criteria: supplementary aids and services**

- (a) Supplementary aids and services are provided in the general education classroom to enable students with disabilities to be educated to the maximum extent appropriate with nondisabled peers.

- (b) A teacher aide may provide supplementary support to a student or students with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:
1. Prompting, cueing and redirecting student participation;
  2. Reinforcing of personal, social, behavioral, and academic learning goals;
  3. Organizing and managing materials and activities; and
  4. Implementation of teacher-designed follow-up and practice activities.
- (c) Supplementary services as described in (b) above shall be provided individually or in groups according to the numbers for in-class resource programs.
- (d) The district board of education shall provide the teacher aide and the appropriate general or special education teaching staff time for consultation on a regular basis, which shall be set forth in policies adopted by the district board of education.
- (e) Consultation as a service on behalf of a student with disabilities or a group of students with disabilities may be provided by a related services provider, a teacher of students with disabilities or a child study team member to the general education teacher and/or the teacher aide. Such consultation shall be specified in each student's IEP. The frequency and duration of the consultation(s) shall be indicated in the IEP. Consultation may include, but is not limited to, the following:
1. The development and demonstration of techniques and strategies;
  2. Data collection on the effectiveness of the techniques and strategies; and
  3. Development of positive behavioral supports.

**6A:14-4.6 Program criteria: supplementary instruction and resource programs**

- (a) Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.
- (b) Supplementary instruction in (a) above shall be provided individually or in groups according to the chart at (m) below. Supplementary instruction may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. Instruction in more than one subject may be provided in a pull-out program of supplemental instruction.
- (c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.
- (d) In-class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (e) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide instruction as defined in (i) and (j) below. In-class resource teachers may provide support and replacement instruction at the same time in accordance with the group size limits for in-class support in (m) below. Pull-out support and pull-out replacement shall not be provided by the same teacher at the same time.
- (f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.

- (g) A teacher of supplementary instruction and a resource program teacher shall be provided time on a regular basis for consultation with appropriate general education teaching staff.
- (h) An in-class resource program or an in-class program of supplementary instruction may be provided up to the student's entire instructional day. At the elementary level, replacement pull-out resource classes may be provided for up to no more than three subject areas per day. At the secondary level, replacement pull-out resource classes may be provided for up to the entire instructional day.
- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.
- (j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.
- (k) The age span in an approved single-subject pull-out resource program shall not exceed three years in elementary programs, and shall not exceed four years in secondary programs.

- (l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.
- (m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide required
<u>In-class</u>				
<u>and Supplementary</u>				
<u>Instruction</u>				
<u>In-class</u>	8	--	10	--
<u>Pull-out support and</u>				
<u>supplemental instruction</u>				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9

	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide Required
<u>Replacement</u>				
<u>Resource</u>				

## Pull-out

Single subject	6	7 to 9	9	10 to 12
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- (n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and ten at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.
- (o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be increased in accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.
- (p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.
- (q) For the 2006-2007 and 2007-2008 school years, multiple-subject replacement pull-out resource programs may be operated in accordance with the provisions of this section for a maximum of four students in any such program at both the elementary and secondary levels. The four student limit shall not be excepted pursuant to N.J.A.C. 6A:14-4.9. Beginning July 1, 2008, multiple-subject pull-out resource programs shall no longer be operated.

### **6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation**

- (a) A special class program shall serve students who have similar intensive educational, behavioral, and other needs related to their disabilities in accordance with their individualized education programs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:
1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;
  2. The age span in special class programs shall not exceed four years in elementary programs, and shall not exceed four years in secondary programs; and
  3. A kindergarten shall not be approved as a special class program.
- (b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.
- (c) The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe cognitive disabilities or severe to profound cognitive disabilities.
- (d) Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.
- (e) Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased

with the addition of a classroom aide according to the numbers listed in Column III as set forth below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

I Program	II Instructional Size: No Classroom Aide Required	III Instructional Size: Classroom Aide Required
Auditory impairments	8	9 to 12
Autism <sup>1</sup>	3	4 to 6 7 to 9 (Secondary only; (Two aides required)
Behavioral disabilities	9	10 to 12
Cognitive <sup>2</sup>		
Mild	12	13 to 16
Moderate	10	11 to 13
Severe	3	4 to 6 7 to 9 (Two aides required)
Learning and/or		

language disabilities		
Mild to moderate	10	11 to 16
Severe	8	9 to 12
Multiple disabilities	8	9 to 12
Preschool disabilities <sup>3</sup>	--	1 to 8
		9 to 12
		(Two aides required)
Visual impairments	8	9 to 12

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1 A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.

2 A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.

3A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.

(f) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.

(g) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall

have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.

(h) Vocational education programs shall meet the following criteria:

1. For the student placed in a vocational program outside of the local district, responsibility shall be as follows:
  - i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;
  - ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the IEP decisions; and
2. In vocational shop and related academic programs, class sizes shall be as follows:
  - i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted according to N.J.A.C. 6A:14-4.9. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:
    - (1) The nature and degree of the student's educationally disabling condition;
    - (2) The interests, aptitudes and abilities of the student;
    - (3) The functional level of the student;
    - (4) The employment potential of the student;
    - (5) The type of occupational area;
    - (6) Instructional strategies;

- (7) Safety factors; and
  - (8) Physical facility requirements.
- (i) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:
  - 1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor and Workforce Development, 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.

**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.

#### **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. 6A:5 shall be granted to this chapter.

#### **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.

#### **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.

## **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 to provide counseling or mental health services. For the related services listed in (c)l<sup>iii</sup> 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 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.

#### **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;
  3. A list of professional staff who will provide services. The list shall verify each individual's certification and license, if a certification and/or license is required for the discipline in which services are being provided, and the function he or she shall fulfill;

- i. Professional staff employed by a clinic or agency who work full time for a district board of education, approved private school for students with disabilities or nonpublic school shall not provide service for the clinic or agency during the hours of that individual's public school or, as applicable, approved private school or nonpublic school employment;
  - ii. An employee of a district board of education, approved private school for students with disabilities or nonpublic school shall not provide service as an employee of a clinic or agency to a student who is the responsibility of his or her employing district board of education or enrolled in his or her approved private school for students with disabilities or nonpublic school;
4. Assurance that the clinic or agency has conducted the criminal history check of each professional according to N.J.S.A. 18A:6-7.1;
  - i. The clinic or agency shall submit to the Department of Education and maintain documentation of the information regarding the criminal history record check;
5. Assurance that the facility or facilities in which the services are being provided meet applicable building and other regulatory standards;
6. Assurance of an adequate accounting system according to generally accepted accounting principles;
7. Assurance of a system for the collection, maintenance, confidentiality and access of student records which is according to N.J.A.C. 6A:32; and
8. Assurance of the maintenance of a log, which includes, but is not limited to:
  - i. A list of services provided;
  - ii. The date, time and location of the services provided; and
  - iii. The names of the professional staff providing each service.

- (b) Any clinic or agency denied approval by the Department of Education may appeal the approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6A:3. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).
- (c) An approved clinic or agency may amend the services provided or the location of its facilities by obtaining prior written approval from the Office of Special Education Programs.
  - 1. To amend the services provided, the agency or clinic shall submit the following:
    - i. A revised description of the scope and nature of services to be offered;
    - ii. A list of professional staff who will provide these services. The list shall verify each individual's certification and license, if one is required and the function he or she will fulfill; and
    - iii. Assurance that the criminal history record check has been conducted according to N.J.S.A. 18A:6-7.1.
  - 2. To amend the location of the facilities, the agency or clinic shall submit an assurance that the facility or facilities in which the services are to be provided meet applicable building and other regulatory standards as required in (a)5 above.
- (d) When a professional staff member leaves or a new professional staff member is hired, the approved clinic or agency shall provide the Office of Special Education Programs written notification within seven calendar days of the change.
- (e) Failure to comply with any requirement of this section may result in the loss of approval.

## **SUBCHAPTER 6. REQUIREMENTS FOR SERVICES IN NONPUBLIC SCHOOLS**

## **6A:14-6.1 Equitable participation under IDEA Part B**

- (a) The board of education of the district of attendance, as required by Federal law and regulation under Part B of the IDEA, shall provide a genuine opportunity for the equitable participation of students with disabilities who are enrolled in nonpublic schools or early childhood programs by their parents.
  - 1. The district of attendance shall make the final decisions with respect to the services to be provided to eligible students with disabilities enrolled in nonpublic schools or early childhood programs.
- (b) The district of attendance shall spend an amount of money equal to a proportionate amount of Federal funds available under Part B of the IDEA for the provision of services to students with disabilities who are attending nonpublic schools.
- (c) The district of attendance, after timely and meaningful consultation with representatives of nonpublic schools, shall undertake a child find process in accordance with IDEA and its implementing regulations to determine the number of parentally placed children with disabilities attending nonpublic schools located within the district.
  - 1. As part of the child find process, the district board of education shall consult with private school representatives and representatives of parents of parentally placed nonpublic school children with disabilities in the design and development of special education and related services for such children.
    - i. After consulting with representatives of participating private schools, the district board of education shall obtain a signed, written affirmation that the consultation as required by IDEA, 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 CFR §§ 300.1 et seq. occurred.

- ii. If a district is unable to obtain such signed, written affirmation, it shall forward documentation of the consultation process to the office of special education programs.
- iii. Nonpublic school officials may file a complaint with the Department of Education if they believe the consultation process was not meaningful and timely.
  - (1) The complaint shall set forth the basis for the alleged noncompliance.
  - (2) The district board of education shall provide documentation of its consultation process to the Department within 30 days of notification of the filing of a complaint with respect to the consultation process.
  - (3) The Department shall then render a determination of whether the consultation was meaningful and, if appropriate, order any necessary corrective action.
  - (4) Appeals of a determination of the Department of Education with respect to the consultation process under this subsection shall be made to the Secretary of the United States Department of Education pursuant to procedures set forth in IDEA, 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 CFR §§ 300.1 et seq.
- (d) Services pursuant to this section may be provided by district board of education personnel, or through contracts with individuals or approved clinics or agencies. In addition, services provided pursuant to this section shall be secular, neutral and non-ideological.

- (e) 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 or early childhood programs by their parents.
  - 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.
  
- (f) If a nonpublic school student with a disability will receive special education or related services from the district of attendance, the district shall:
  - 1. Initiate and conduct meetings according to N.J.A.C. 6A:14-2.3(k) to develop, review and revise a service plan for the student.
    - i. For the services provided by the public education agency, the service plan for a student with a disability enrolled in a nonpublic school or early childhood program 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. The transition requirements described in N.J.A.C. 6A:14-3.7(e) shall be included only when the responsible district is providing transition services to the student; and
  - 2. Ensure that a representative of the nonpublic school or early childhood program attends each meeting. If the representative of the nonpublic school cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

**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.

**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:23A-16 through 22.
- (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.

**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.

**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:9B-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, 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.

## **SUBCHAPTER 7. RECEIVING SCHOOLS**

### **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.

#### **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:23A-18.

### **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
    - ii. 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.
  - 2. To amend the location of its facilities, an approved private school for students with disabilities shall submit a copy of the valid health, fire, HVAC inspections, occupancy and, if applicable sewerage plant.

3. In accordance with N.J.A.C. 6A:23-4.3(a)1, if an approved private school for students with disabilities seeks to expand the school and its program by opening an additional location, the school must submit an application for approval as a new private school for students with disabilities in accordance with this subchapter and receive such approval prior to operating an approved private school in the new location.
- (b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for students with disabilities, the approved private school shall provide written notification to the Department of Education through the county office within seven calendar days of the change.

#### **6A:14-7.4 Annual procedures for private schools for students with disabilities**

- (a) Annually, each approved private school for students with disabilities shall submit fiscal information according to N.J.A.C. 6A:23 to the Office of Finance.
- (b) Annually, each approved private school for students with disabilities shall obtain valid certificates of fire inspection and if applicable, health, HVAC inspections, and, if applicable, sewerage plant. Such certificates shall be maintained and shall be available upon request for review by the Department of Education through the county office of education.

#### **6A:14-7.5 Responsibilities of district boards of education**

- (a) The educational program of a student with a disability provided through contractual agreements as described in N.J.A.C. 6A:14-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be

responsible for the development and annual review of the IEP and the reevaluation of the student. At least annually, the district board of education shall monitor the implementation of the IEP.

1. For students with disabilities placed in programs described in N.J.A.C. 6A:14-7.1(a), representative(s) of the program and the district board of education shall participate in meeting(s) according to N.J.A.C. 6A:14-2.3(k)2.
- (b) When a student with a disability is placed in a receiving school as described in N.J.A.C. 6A:14-7.1(a), the district board of education shall provide written notification to the Department of Education through the county office within 10 calendar days of the placement. Such notification shall include a copy of the student's IEP.
1. A district board of education shall place a student with a disability in a receiving school only when it can assure that the student's IEP can be implemented in that setting.
    - i. The IEP of a student placed in a receiving school shall only be amended by the IEP team of the district board of education.
  2. Prior to placement in the receiving school, a representative of the district board of education and, if possible, the parent shall visit the school.
  3. When a district board of education places a student with a disability in an approved residential private school in order to provide the student a free, appropriate public education, such placement shall be at no cost to the parent. The district board of education shall be responsible for special education costs, room and board.
  4. Placement of a student with a disability in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education and related services costs.

When the student has been placed by a public agency empowered to make such placement, the district board of education shall convene a meeting according to N.J.A.C. 6A:14-2.3(k) to revise the IEP as necessary to provide the student special education and related services.

- (c) If the approval of a private school for students with disabilities is removed, a district board of education having a student with a disability placed therein shall immediately begin seeking an alternative, appropriate placement for that student.

### **6A:14-7.6 Provision of programs**

- (a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6A:14-2.8, the applicable provisions of N.J.A.C. 6A:14- 4, and to the student's IEP.
- (b) When the parent or district board of education requests mediation or due process, the student with a disability shall remain in the current placement, according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u), as applicable.
- (c) All personnel serving students with disabilities shall be highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law.
- (d) Each school shall have on staff a full-time non-teaching principal who shall be responsible for administration and supervision of the school.
  - 1. In lieu of assigning a full-time non-teaching principal to a school, a plan to ensure adequate supervision of students and staff may be submitted to the county superintendent of schools for approval;

2. If the county superintendent of schools approves the plan, the school shall operate in accordance with the plan in lieu of having a full-time non-teaching principal on staff.
- (e) Students with disabilities who are placed in receiving schools may be suspended for up to 10 consecutive or cumulative school days in a school year by the receiving school. Such suspensions are subject to the same procedures as nondisabled students as set forth at N.J.A.C. 6A:14-2.8. However, at the time of suspension, the principal of the receiving school shall forward written notification and a description of the reasons for such action to the district board of education's case manager.
  - (f) A receiving school shall not unilaterally implement disciplinary action involving removal to an interim alternative educational setting, suspension of more than 10 consecutive or cumulative school days in a school year or termination of placement. Such disciplinary action shall be implemented in conjunction with the sending district board of education according to N.J.A.C. 6A:14-2.8.
  - (g) Educational programs shall be open to observation at all times to the representatives of the sending district board of education and of the Department of Education.
  - (h) With prior written approval of the Department of Education, a school described in N.J.A.C. 6A:14-7.1(a) may operate an extended academic year program.
  - (i) A school day shall consist of not less than four hours of actual school work, which does not include nonacademic time such as lunch and recess periods, except that a special class program for preschoolers with disabilities operated in accordance with N.J.A.C. 6A:14-4.1 may be considered a full day program.
  - (j) A provider of programs under this subchapter shall notify the Department of Education a minimum of 90 calendar days prior to ceasing operation or a change in ownership.

## **6A:14-7.7 Termination or withdrawal from a receiving school**

- (a) When a receiving school is considering the termination of a student's placement prior to the end of the student's academic year, the receiving school shall immediately contact the district board of education. The district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall occur within 10 school days of the date of the notification and shall include the participation of appropriate personnel from the receiving school, including a minimum of one person who participated in making the recommendation to terminate the placement.
1. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be 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.
- (b) When the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year, the district board of education shall convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k). Such meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be 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.

#### **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:23A-16 through 22.
- (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:23A-16 through 22.

## **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:23A-16 through 22 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.

## **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.

**SUBCHAPTER 8. PROGRAMS OPERATED BY THE DEPARTMENTS  
OF CORRECTIONS, CHILDREN AND FAMILIES, 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.

### **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.

### **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 Children and Families shall be provided in the following manner:
  - 1. The Department of Children and Families 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.

## **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 noncompliance 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.

### **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.

## **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 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 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.

## APPENDIX A

### Individuals with Disabilities Education Act Amendments of 2004

20 U.S.C. §§1415, 1412, 1414

20 U.S.C. § 1415

#### (k) Placement in alternative educational setting

##### (1) Authority of school personnel

###### (A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

###### (B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

###### (C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is

determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall--

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall--

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child--

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

#### (H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

#### (2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

#### (3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may--

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that

maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined

in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred--

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation

of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 812(c) of Title 21.

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of Title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of Title 18.

20 U.S.C. § 1412

(a) In general

A State is eligible for assistance under this subchapter for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(1) Free appropriate public education

(A) In general

A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) Limitation

The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children--

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this subchapter be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility--

(I) were not actually identified as being a child with a disability under section 1401 of this title; or

(II) did not have an individualized education program under this subchapter.

20 U.S.C. § 1414

(a) Evaluations, parental consent, and reevaluations

(1) Initial evaluations

(A) In general

A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b) of this section, before the initial provision of special education and related services to a child with a disability under this part.

(B) Request for initial evaluation

Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures

(i) In general

Such initial evaluation shall consist of procedures--

(I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

(II) to determine the educational needs of such child.

(ii) Exception

The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if--

(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

(D) Parental consent

(i) In general

(I) Consent for initial evaluation

The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(II) Consent for services

An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

(ii) Absence of consent

(I) For initial evaluation

If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For services

If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.

(III) Effect on agency obligations

If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent--

(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to

provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for wards of the State

(I) In general

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

(II) Exception

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if--

(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(bb) the rights of the parents of the child have been terminated in accordance with State law; or

(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(E) Rule of construction

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.

(2) Reevaluations

(A) In general

A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c) of this section--

(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) if the child's parents or teacher requests a reevaluation.

**(B) Limitation**

A reevaluation conducted under subparagraph (A) shall occur--

(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

**(b) Evaluation procedures**

**(1) Notice**

The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 1415 of this title, that describes any evaluation procedures such agency proposes to conduct.

**(2) Conduct of evaluation**

In conducting the evaluation, the local educational agency shall--

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining--

(i) whether the child is a child with a disability; and

(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Additional requirements

Each local educational agency shall ensure that--

(A) assessments and other evaluation materials used to assess a child under this section--

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

(iii) are used for purposes for which the assessments or measures are valid and reliable;

(iv) are administered by trained and knowledgeable personnel; and

(v) are administered in accordance with any instructions provided by the producer of such assessments;

(B) the child is assessed in all areas of suspected disability;

(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(4) Determination of eligibility and educational need

Upon completion of the administration of assessments and other evaluation measures--

(A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is--

(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title);

(B) lack of instruction in math; or

(C) limited English proficiency.

(6) Specific learning disabilities

(A) In general

Notwithstanding section 1406(b) of this title, when determining whether a child has a specific learning disability as defined in section 1401 of this title, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(B) Additional authority

In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

(c) Additional requirements for evaluation and reevaluations

(1) Review of existing evaluation data

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall--

(A) review existing evaluation data on the child, including--

(i) evaluations and information provided by the parents of the child;

(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) observations by teachers and related services providers; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--

(i) whether the child is a child with a disability as defined in section 1401(3) of this title, and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) the present levels of academic achievement and related developmental needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(2) Source of data

The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) Parental consent

Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D) of this section, prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that

it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) Requirements if additional data are not needed

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency--

(A) shall notify the child's parents of--

(i) that determination and the reasons for the determination; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) Evaluations before change in eligibility

(A) In general

Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

(B) Exception

(i) In general

The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this subchapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

(ii) Summary of performance

For a child whose eligibility under this subchapter terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

## APPENDIX B

20 U.S.C. § 1401(26)

20 U.S.C. § 1401(26)

Except as otherwise provided, in this chapter:

### (26) Related services

#### (A) In general

The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

#### (B) Exception

The term does not include a medical device that is surgically implanted, or the replacement of such device.

APPENDIX C

20 U.S.C. §1401(29)

20 U.S.C. § 1401(29)

(29) SPECIAL EDUCATION- The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

## APPENDIX D

20 U.S.C. §1401(34)

20 U.S.C. § 1401(34)

(34) Transition services. The term "transition services" means a coordinated set of activities for a child with a disability that—

(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

## APPENDIX E

20 U.S.C. §1412(a)(3)

20 U.S.C. § 1412(a)(3)

(3) Child find.

(A) In general. All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) Construction. Nothing in this title 20 U.S.C.S. §§1400 et seq. requires that children be classified by their disability so long as each child who has a disability listed in section 602 20 U.S.C.S. §1401 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part 20 U.S.C.S. §§1411 et seq.

APPENDIX F

20 U.S.C. §1401(1)

20 U.S.C. §1401(1)

(1) Assistive technology device.

(A) In general. The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.

## APPENDIX G

20 U.S.C. §1401(2)

20 U.S.C. §1401(2)

(2) Assistive technology service. The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child;  
and

(F) training or technical assistance for professionals (including individuals providing education

and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.