CHAPTER 6A
SPECIAL EDUCATION PROGRAM

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

Source and Effective Date
Sec. 31 N.J.R. 397(a), 32 N.J.R. 785(c).

Executive Order No. 66(1978) Expiration Date

Chapter Historical Note

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1987 d.500, effective May 4, 1987, effective July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(c), 19 N.J.R. 713(a).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1990 d.169, effective March 19, 1990. See: 31 N.J.R. 2097(a), 32 N.J.R. 915(c).


Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.2003 d.94, effective February 16, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY

1:6A-1.1 Applicability

(b) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6:28. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

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

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

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

16A-4.1 Mediation by the Department of Education

(a) Upon receipt of a hearing request, the Department of Education shall promptly contact the parties to determine whether mediation is requested.

1. If both parties consent to mediation, a mediation conference shall be held within 10 days of the hearing request.

2. If mediation is declined by either party, the Department of Education shall prepare a written document that specifies the issues in dispute, any stipulations, and evidence and witness lists for each party. This document shall be included with the transmittal form and shall be immediately forwarded to the Office of Administrative Law. Copies of the written document and of the transmittal form shall be sent to the parties.

(b) If the mediation conference results in a settlement, the terms shall be reduced to writing and signed by the parties and the representative of the Department of Education.

(c) If the mediation conference does not result in a settlement, the Department of Education representative shall prepare a written document at the mediation that specifies the issues in dispute, any stipulations, and evidence and witness lists for each party. This document shall be included with the transmittal form and shall be immediately forwarded to the Office of Administrative Law. Copies of the written document and of the transmittal form shall be sent to the parties. Any exhibits that both parties agree are admissible may be attached to the document.

(d) The Department of Education shall include with the transmittal any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties.

(e) An administrative law judge may grant an adjournment of the mediation conference upon the written consent of both parties to an extension of the deadline for decision.

Amended by R.1990 d.405, effective August 6, 1990.
See: 22 N.J.R. 1269(a), 22 N.J.R. 2262(b).
(3) Added language specifying that parents shall provide the permanent address with a telephone number for contact.

Case Notes

Case Notes


Lay person is not prohibited from receiving fees for work done as an expert consultant or witness at a hearing to determine appropriateness of education being provided to handicapped children. Arons v. New Jersey State Bd. of Educ., C.A.3 (N.J.) 1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 225.


Possible adjustment of computer program for multiply handicapped child's home use was more appropriately addressed by agency than by emergent relief. M.S. v. Mount Laurel Board, 95 N.J.A.R.2d (ESS) 250.

16A-4.2 (Reserved)

See: 31 N.J.R. 3875(a), 33 N.J.R. 785(a).

16A-4.3 Ongoing settlement efforts

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

(b) Any ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless a party requests an adjournment and the judge approves the adjournment to a specific date. Any such adjournment shall extend the deadline for decision, as established in N.J.A.C. 16A-18.4, Deadline for decision, by an amount of time equal to the adjournment.
SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation

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

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


1:6A-5.2 Adjournments

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

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

Amended by R.2003 d.94, effective March 6, 2003.
Sec: 31 N.J.R. 3975(a), 32 N.J.R. 783(c).
In (a), inserted “of the hearing” following “adjournment”.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

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

(a) At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled, the representative of the Department shall, either in the presence of the parties or through telephone conference call to the parties, telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall be the greatest extent possible, be convenient to all parties but shall be no later than 10 days from the date of the scheduling call, unless a later date is approved by a judge. If a party is not available for scheduling, either at the mediation conference or by telephone conference call, a hearing date shall be assigned by the Clerk. If a later date is approved by a judge, the deadline for decision, as established in N.J.A.C. 1:6A-18.1, shall be extended by a time equal to the amount of delay.

(b) The Commissioner of Education shall, no later than three days after the scheduling call, transmit the matter to the Office of Administrative Law. Copies of all notices, requests, pleadings, filings, stipulations of issues and facts, evidence and witness lists compiled at the conference and a description of the positions of each party shall be included with the standard Office of Administrative Law transmitted form required by N.J.A.C. 1:1-8.2.

Amended by R.1990 d.405, effective August 6, 1990.
Sec: 22 N.J.R. 1295(a), 22 N.J.R. 2290(a).
Revised section into subsections (a) and (b).
Deleted “agreed upon by all parties” referring to later date scheduling.

1:6A-9.2 Scheduling of hearing by party

(a) At the conclusion of an unsuccessful mediation conference or when mediation is not scheduled, the representative of the Department shall, either in the presence of the parties or through telephone conference call to the parties, telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall be the greatest extent possible, be convenient to all parties but shall be no later than 10 days from the date of the scheduling call, unless a later date is approved by a judge. If a party is not available for scheduling, either at the mediation conference or by telephone conference call, a hearing date shall be assigned by the Clerk. If a later date is approved by a judge, the deadline for decision, as established in N.J.A.C. 1:6A-18.1, shall be extended by a time equal to the amount of delay.

(b) The Commissioner of Education shall, no later than three days after the scheduling call, transmit the matter to the Office of Administrative Law. Copies of all notices, requests, pleadings, filings, stipulations of issues and facts, evidence and witness lists compiled at the conference and a description of the positions of each party shall be included with the standard Office of Administrative Law transmitted form required by N.J.A.C. 1:1-8.2.

Amended by R.1990 d.405, effective August 6, 1990.
Sec: 22 N.J.R. 1295(a), 22 N.J.R. 2290(a).
Revised section into subsections (a) and (b).
Deleted “agreed upon by all parties” referring to later date scheduling.

1:6A-10. DISCOVERY

1:6A-10.1 Discovery

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

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

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

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

Amended by R.2000 d.94, effective March 6, 2000.
Sec: 31 N.J.R. 3975(a), 32 N.J.R. 783(c).
Revised (a); and in (c), substituted a reference to business days for a reference to days.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

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

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

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

(g) After granting or denying the requested relief, the judge shall either return the parties to the Department of Education for a mediation conference under N.J.A.C. 1:6A-4.2 if both parties consent to mediation or schedule hearing dates.

Amended by R.2000 d.04, effective March 6, 2003.
Sec: 31 N.J.R. 797(e), 32 N.J.R. 790(g).
In (g), substituted "State Director of the Office of Special Education Programs" for "Department of Education, attention Division of Special Education" in the first sentence; and rewrote (e) and (g).

Case Notes:
Parents of handicapped student were not entitled to order requiring state agencies to fund residential costs. Woods v. New Jersey Dep't of Educ., D.N.J. 1993, 823 F.Supp. 924.


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

Emergency relief request denied when change of classroom location was not great cause of change of program. C.M. v. Elizabeth Board of Education, 96 N.J.A.R. 2d (E.D.N.J.) 122.


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School board's request for emergency relief to implement special education services granted where reasonable probability of board prevailing on merits existed. Bergenfield Board of Education v. C.W., 96 N.J.A.R.2d (EDS) 238.

Emergency relief was not available to provide a sign-language interpreter to a hearing impaired student attending a private school while residing in district. M.S. v. Washington Township Board, 95 N.J.A.R.2d (EDS) 235.

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

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


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


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

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


SUBCHAPTER 13. PREHEARING CONFERENCES

16A-13.1 Prehearing conferences

Prehearing conferences shall not be scheduled in special education hearings.

SUBCHAPTER 14. CONDUCT OF CASES

16A-14.1 Procedures for hearing

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

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

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

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

Amended by R.1972 c.331, effective September 8, 1972.
See 24 N.J.R. 1016(c), 24 N.J.R. 1091(c).
Deemed (c), redesignated (h)-(i) at (c)-(d).

16A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

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

2. At the request of a parent if:

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

ii. The parent disagrees with an order of school personnel removing a pupil with a disability from the pupil's current placement for more than 10 days or a series of removals that constitute a change in placement pursuant to 34 CFR 300.519 for a violation of school rules.

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

1. Determine whether both parties request mediation;

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

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

(c) The hearing date for the expedited hearing shall be no later than 10 days from the date of the hearing request. If both parties cannot agree to a hearing date within 10 days of the hearing request, a date shall be assigned by the Clerk within the required timelines.

(d) In an expedited hearing:

1. Responses to requests for discovery pursuant to N.J.A.C. 16A-10.1 shall be completed no later than two business days before the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least two business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

2. A written decision shall be issued by the judge and mailed by the Office of Administrative Law on later than
45 days from the date of the hearing request. The time for issuance of an initial decision shall not be extended.

(e) In an expedited hearing pursuant to (a)1 and 2(2) above, the judge may order placement of the pupil in an appropriate interim alternative educational setting if the judge:

1. Considers the appropriateness of the child's current placement;

2. Considers whether the board of education or public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;

3. Determines that the board of education or public agency has demonstrated by substantial evidence, that is, beyond a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; and

4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher will enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive their services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP and includes services and modifications to address the behavior and that are designed to prevent the behavior from recurring.

(f) In an expedited hearing pursuant to (a)2 above, the judge shall determine whether the board of education or public agency has demonstrated that the pupil's behavior was not a manifestation of the pupil's disability.

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


See 31 N.J.R. 3755(a), 32 N.J.R. 785(s).


16A-14.3 Interpreters

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


See 31 N.J.R. 3755(a), 32 N.J.R. 785(s).


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OFFICE OF ADMINISTRATIVE LAW

16A-14.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6:28-1 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The Judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 CFR 300.509)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadlines for decision, as established in N.J.A.C. 16A-14.1, will be extended by an amount of time equal to the adjournment.


See 31 N.J.R. 3755(a), 32 N.J.R. 785(s).


16A-14.5 Transcripts

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

(b) Transcripts of any hearing may be obtained pursuant to 20 U.S.C. § 1415(d)(1) by contacting the Office of Special Education Programs.


See 24 N.J.R. 3520(a); 24 N.J.R. 3091(s).


See 31 N.J.R. 3755(a), 32 N.J.R. 785(s).

Reacts (b).

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. DECISION AND APPEAL

16A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 16A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request.
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Sec. 24 N.J.R. 1926(e)(a), 24 N.J.R. 3091(e).
Revised text.

1:6A-18.2 Confidentiality

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

(b) Records of special education hearings shall be maintained in confidence pursuant to Federal regulations, 34 CFR 300.500 et seq. at the Office of Special Education Programs.

Amended by R.2000 d.94, effective March 6, 2000.
Sec: 31 N.J.R. 5875(e)(a), 32 N.J.R. 785(e).
Revised (b).

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

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

(b) A party intending to appeal the administrative law judge’s decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the Office of Special Education Programs. The requesting party shall bear the cost of any necessary reproduction, provided, however, that requesting parents shall not be charged or assessed costs. Written requests for this material should be directed to the Office of Special Education Programs.

(c) The record shall consist of all documents transmitted by the Department of Education to the Office of Administrative Law; correspondence; any documents relating to motions; briefs; exhibits; transcripts, if any; the administrative law judge’s decision; and any other material specifically incorporated into the record by the judge.


Sec: 22 N.J.R. 3478(e).
Sec: 24 N.J.R. 1926(e)(a), 24 N.J.R. 3091(e).
Revised (b).
Amended by R.2000 d.94, effective March 6, 2000.
Sec: 31 N.J.R. 5875(e)(a), 32 N.J.R. 785(e).
Revised text.

1:6A-18.4 Stay of Implementation

(a) Unless the parties otherwise agree or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.515.

(b) When a party appeals any portion of the decision not involving a change in the pupil’s educational placement, and upon request by any party, the judge may stay implementation of the decision if immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

Amended by R.2000 d.94, effective March 6, 2000.
Sec: 31 N.J.R. 5875(e)(a), 32 N.J.R. 785(e).
In (a), inserted "or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2 following "agree".

Case Notes
Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of study, was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. M.H. v. East Windsor Regional School District, 9 N.J.A.R. 159 (1996).

1:6A-18.5 (Reserved)

Sec: 24 N.J.R. 1926(e)(a), 24 N.J.R. 3091(e).
Section was "Motion to reopen hearing".
New Jersey Department of Education
Office of Special Education Programs

Short Procedural Safeguards Statement

As the parent of a student who is or may be determined eligible for special education services or as an adult student who is or may be determined eligible for special education services, you have rights regarding identification, evaluation, classification, the development of an IEP, placement and the provision of a free, appropriate public education under the New Jersey Administrative Code for Special Education, N.J.A.C. 6A:14. A description of these rights, which are called procedural safeguards, is contained in the document, *Parental Rights in Special Education (PRISE)*. The document is published by the New Jersey Department of Education.

A copy of the PRISE is provided to you one time each year, upon request by you, upon referral for an initial evaluation, when a disciplinary action that constitutes a change in placement is imposed, when a due process hearing is requested, and when a request for a complaint investigation is filed by you.

To obtain a copy of PRISE, please contact:

Department of Special Education 732-613-6748

School District Office or Personnel Phone Number

For help in understanding your rights, you may contact any of the following:

Renee Davis, Director of Special Education 732-613-6748

School District Representative Phone Number

Statewide Parent Advocacy Network (SPAN) at (800) 654-7726

Disability Rights New Jersey at (800) 922-7233

New Jersey Department of Education through its Middlesex County Office.

Melissa Pearce 973-579-6996

County Supervisor of Child Study Phone Number