

Education

State Board Of Education

Special Education

Proposed Readoption with Amendments: N.J.A.C. 6A:14

Authorized By: New Jersey State Board of Education, Lamont O. Repollet, Commissioner,
Department of Education, Secretary, State Board of Education.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-053.

Submit written comments by July 3, 2020, to:

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The agency proposal follows:

Summary

The Department of Education (Department) proposes to readopt, with technical amendments, N.J.A.C. 6A:14, Special Education. The chapter sets forth the rules for the

provision of a free and appropriate public education to students with disabilities, including all substantive and procedural safeguards afforded by State and Federal law. The chapter includes rules concerning the services, programs, and instruction, including educational and related services, provided to students with disabilities. The chapter was scheduled to expire on June 26, 2020, pursuant to N.J.S.A. 52:14B-5.1.c. As the Department filed this notice with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to December 17, 2020, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The chapter was adopted in 1998 and readopted in 2003. The chapter was readopted again in August 2006, with significant amendments due to the reauthorization of the Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., in December 2004. The chapter was readopted with technical amendments in 2013.

The chapter sets forth the requirements of district board of education eligibility for assistance under the IDEA and also includes the rules for conducting special education program monitoring and complaint investigations. The chapter also includes the rules for providing services for students with disabilities in nonpublic schools, as well as the rules and requirements for receiving schools. The chapter also includes rules addressing the intersection of district board of education responsibilities and those of other State departments and agencies operating early intervention programs.

The Department proposes to readopt the chapter with limited amendments to ensure that the rules do not expire. The Department also plans to initiate a future rulemaking that will take into account the comments received during the readoption process, and feedback from future stakeholder engagement.

The proposed amendments incorporate feedback that the Department received as part of its regular interaction with district boards of education and numerous stakeholder groups since the readoption of the existing rules in 2013.

The proposed readoption of the special education rules with amendments will advance the Department's vision to increase educational equity for all students by protecting the legal and procedural safeguards of students with disabilities. The rules proposed for readoption with amendments will ensure students with disabilities continue to have opportunities to be educated in the least restrictive environment with their nondisabled peers to the maximum extent possible.

The following summarizes the rules proposed for readoption. Unless otherwise specifically noted below, all proposed amendments are to update terminology and New Jersey Administrative Code cross-references or for clarity or stylistic or grammatical improvement.

Subchapter 1. General Provisions

This subchapter establishes the chapter's purpose and scope, as well as the chapter's definitions. The subchapter sets forth district board of education eligibility for financial assistance under the IDEA.

N.J.A.C. 6A:14-1.1 General requirements

This section establishes the scope of the chapter and identifies the parties to which the rules apply. The chapter applies to all public and private education agencies providing publicly funded educational programs and services to students with disabilities. The rules also require programs and services to be provided to students age three through 21.

N.J.A.C. 6A:14-1.2 District eligibility for assistance under IDEA Part B

This section sets forth the criteria for district board of education eligibility for fiscal assistance under IDEA Part B. Each district board of education, and each State agency program

that acts as a district board of education, is eligible for financial assistance under IDEA Part B for a fiscal year by having a special education plan that meets the required criteria.

The Department proposes to amend the section's heading to replace "district" with "district board of education" to ensure consistent usage of the defined term "district board of education." The Department proposes the same amendment and to replace "school district," "school board," and "public agency" with "district board of education" throughout the chapter, where applicable. The Department also proposes, at N.J.A.C. 6A:14-1.2(a)2ii, to replace "LEA," which stands for "local education agency," with "district board of education."

The Department proposes amendments at N.J.A.C. 6A:14-1.2(b)4, which requires each district board of education to have policies, procedures, and programs that ensure homeless students are located, identified, evaluated, and provided special education and related services in accordance with the IDEA. The proposed amendments add "who" before "are located" and to replace "and evaluated and provided" with "evaluated, and determined eligible are provided." The proposed amendments will clarify that not all homeless students are evaluated and that only homeless students determined to be eligible are provided special education and related services.

The Department proposes amendments at N.J.A.C. 6A:14-1.2(b)13, which requires each district board of education to have policies, procedures, and programs that ensure 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, to delete "highly qualified and." The Every Student Succeeds Act, 114 P.L. 95, 129 Stat. 1802, which reauthorized the Federal Elementary and Secondary Education Act, removed requirements related to highly qualified teachers.

N.J.A.C. 6A:14-1.3 Definitions

This section provides definitions of words and terms found throughout N.J.A.C. 6A:14.

The Department proposes a definition for “alternate assessment” to mean the same as “alternative assessment for students with disabilities,” as defined at N.J.A.C. 6A:8-1.3.

The Department proposes to delete the definition of “general Statewide assessment,” which currently 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.” The Department proposes a new definition for “Statewide assessment” to mean the same as “assessment” at N.J.A.C. 6A:8-1.3 and to state that “Statewide assessment” includes the alternate assessment.

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

The Department proposes a definition for “Office” to mean the Department’s Office of Special Education Policy and Dispute Resolution. The Department also proposes, throughout the chapter, to replace “Office of Special Education Programs” with “Office,” where applicable.

Subchapter 2. Procedural Safeguards

This subchapter establishes the procedural safeguards afforded to students with disabilities and their families to ensure district boards of education provide a free, appropriate public education to students with disabilities.

N.J.A.C. 6A:14-2.1 General requirements

This section describes the right of a student with a disability who voluntarily leaves a public school program to reenroll at any time up to and including the school year of his or her 21st birthday. The section also requires district boards of education to provide copies of special education statutes and relevant rules to parents or adult students upon request.

N.J.A.C. 6A:14-2.2 Surrogate parents, wards of the State, and foster parents

This section describes the procedures for assigning surrogate parents to students with disabilities and for determining the "parent" when a student with a disability is in the care of a resource family parent.

The Department proposes amendments at N.J.A.C. 6A:14-2.2(a)4, which requires a district board of education or responsible State agency to 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 the student is an unaccompanied homeless youth as that term is defined in the McKinney-Vento Homeless Assistance Act, 100 P.L. 77, 101 Stat. 482, to delete "homeless" and to add "and N.J.A.C. 6A:17-1.2." "Unaccompanied youth" is the defined term in the McKinney-Vento Homeless Assistance Act and in State rules at N.J.A.C. 6A:17, Education of Homeless Children and Students in State Facilities.

N.J.A.C. 6A:14-2.3 Parental consent, notice, participation, and meetings

This section identifies the situations when parental consent must be obtained by the district board of education. The section also sets forth the procedures that must be followed when a parent refuses to provide consent or revokes parental consent. This section also describes the requirements regarding written notice and district board of education responsibilities when responding to written parental requests. In addition, this section lists the required participants in

eligibility and IEP team meetings, as well as the required procedures for scheduling and conducting IEP team meetings.

N.J.A.C. 6A:14-2.4 Native language

This section sets forth the requirements for providing written notice to parents in the parent's native language.

N.J.A.C. 6A:14-2.5 Protection in evaluation procedures

This section describes the procedures for conducting evaluations to determine eligibility for special education and related services, including required methodology and district board of education response to parental requests for independent evaluations.

N.J.A.C. 6A:14-2.6 Mediation

This section describes the mediation process and the procedures followed by the Office in scheduling and conducting mediation conferences.

The Department proposes an amendment at N.J.A.C. 6A:14-2.6(d)11, which, in part states a request for enforcement of a mediation agreement may be made in writing to the Director of the Office of Special Education Policy and Dispute Resolution (Office) to replace “may” with “shall.” While submitting a request for enforcement of a mediation agreement is optional, all requests must be made in writing to the Office’s Director.

N.J.A.C. 6A:14-2.7 Due process hearings

This section governs due process hearings, including the procedures followed by the Office to transmit requests for due process hearings to the Office of Administrative Law. This section also describes the different types of due process hearing requests.

The Department proposes an amendment at N.J.A.C. 6A:14-2.7(h)8, which allows the parties to agree to participate in mediation conducted by a mediator from the Office of Special

Education Programs in the place of a resolution meeting, to replace “office of special education programs” with “Office of Administrative Law,” to correct the reference to the State agency responsible for employing the special education mediators.

N.J.A.C. 6A:14-2.8 Discipline/suspension/expulsions

This section sets forth the rules regarding the discipline of students with disabilities. The section describes the procedures that school districts must follow when removing students with disabilities from their educational programs as required by State and Federal laws, rules, and regulations.

N.J.A.C. 6A:14-2.9 Student records

This section requires all student records to be maintained according to N.J.A.C. 6A:32, School District Operations. The section also allows a parent, adult student, or designated representative to inspect and review the contents of the student’s record maintained by the district board of education without unnecessary delay and before any meeting regarding the IEP.

N.J.A.C. 6A:14-2.10 Reimbursement for unilateral placement by parents

This section sets forth the procedures to determine whether a school district will be responsible for reimbursement of the cost of unilateral placements by parents of students with disabilities.

Subchapter 3. Services

This subchapter establishes the general requirements for a district board of education’s child study team members, as well as their respective roles and responsibilities. This subchapter sets forth the rules for locating, referring, identifying, and evaluating students to determine eligibility for special education and related services. This subchapter also sets forth the rules concerning the development and implementation of a student’s IEP.

N.J.A.C. 6A:14-3.1 General requirements

This section establishes how members of the child study team function in relation to referral, identification, evaluation, eligibility determination, and development of IEPs. The section also sets forth procedures for identifying students, planning and completing evaluations, and development of IEPs, including all necessary procedural protections.

N.J.A.C. 6A:14-3.2 Case manager

This section establishes the role and function of the case manager in the education of students with disabilities, including his or her role in coordinating the development, monitoring, and evaluation of IEP effectiveness, as well as facilitating the communication between home and school.

N.J.A.C. 6A:14-3.3 Location, referral, and identification

This section sets forth the procedures for locating, referring, and identifying students with disabilities throughout school districts and in nonpublic schools.

N.J.A.C. 6A:14-3.4 Evaluation

This section sets forth the procedures for conducting evaluations of students with disabilities, including obtaining parental consent.

N.J.A.C. 6A:14-3.5 Determination of eligibility for special education and related services

This section sets forth the procedures for determining eligibility for special education and related services and defines the eligibility categories.

The Department proposes amendments at N.J.A.C. 6A:14-3.5(c) to update references to the eligibility category titles and related terminology to align the rules with the IDEA and its implementing regulations.

N.J.A.C. 6A:14-3.6 Determination of eligibility for speech-language services

This section sets forth the procedures for determining eligibility for speech-language services.

N.J.A.C. 6A:14-3.7 Individualized education program

This section sets forth the required sections of an IEP and the procedures for developing and revising student IEPs.

The Department proposes an amendment at N.J.A.C. 6A:14-3.7(e)13, which, in part, requires the district board of education or public agency to take other steps to ensure the student's preferences and interests are considered if a student with disabilities does not attend the IEP meeting where transition services are discussed. The proposed amendment deletes “or public agency” since “State agency or other public agency” already is included in the definition of “district board of education.”

N.J.A.C. 6A:14-3.8 Reevaluation

This section sets forth the requirements and procedures for conducting reevaluations of students with disabilities.

N.J.A.C. 6A:14-3.9 Related services

This section describes the related services that may be provided to a student with a disability as part of an IEP and sets forth the required staff certifications for personnel providing the services, where appropriate.

Subchapter 4. Programs and Instruction

This subchapter sets forth the requirements for providing services, programs, and instruction to students with disabilities. This subchapter also includes the criteria for participation in Statewide assessments, as well as graduation requirements for students with disabilities.

N.J.A.C. 6A:14-4.1 General requirements

This section sets forth the general requirements for providing educational programs and related services for students with disabilities. The section also requires Department approval of a district board of education proposal to establish or eliminate special education programs or services. The section also sets forth the procedures for when a student with a disability transfers into a school district.

N.J.A.C. 6A:14-4.2 Placement in the least restrictive environment

This section requires all students with disabilities to be educated in the least restrictive environment as determined by the IEP team. The section also requires a district board of education to provide nonacademic and extracurricular services and activities that provide students with disabilities with an equal opportunity to participate.

N.J.A.C. 6A:14-4.3 Program options

This section sets forth the program options available for educating students with disabilities in the least restrictive environment. The section also requires the IEP team to make an individual determination regarding the need for an extended school year program, which is an extension of special education and related services beyond the regular school year.

N.J.A.C. 6A:14-4.4 Program criteria: speech-language services

This section requires speech-language services provided to students with disabilities to be in addition to the regular instructional program. The section also allows speech-language services to be provided individually or in groups as determined by the IEP team, as long as a group does not exceed five students.

N.J.A.C. 6A:14-4.5 Program criteria: supplementary aids and services

This section sets forth the supplementary aids and services that may be provided to students with disabilities either individually or in groups, in accordance with their IEPs. Supplementary aids and services are provided in the general education classroom to enable students with disabilities to be educated with nondisabled peers to the maximum extent appropriate.

N.J.A.C. 6A:14-4.6 Program criteria: supplementary instruction and resource programs

This section sets forth the criteria for supplementary instruction and resource programs that may be provided to students with disabilities, in accordance with their IEPs. Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught.

N.J.A.C. 6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation

This section describes special class programs, secondary programs, and vocational rehabilitation programs available to students with disabilities, in accordance with their IEPs.

The Department proposes amendments at N.J.A.C. 6A:14-4.7(i)1, which provides a non-exhaustive list of State agencies that can approve community rehabilitation programs to provide vocational evaluation, work adjustment training, job coaching, skill training, supported employment, and time-limited job coaching for secondary level students. The proposed amendments delete the reference to Department of Human Services' Division of Developmental Disabilities because the Division no longer provides services to individuals under the age of 21.

N.J.A.C. 6A:14-4.8 Program criteria: home instruction

This section contains the requirements for providing one-to-one home instruction to a student with a disability when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.

N.J.A.C. 6A:14-4.9 Exceptions

This section sets forth the procedure for obtaining an exception to the chapter's class size and age-range requirements. The section allows exceptions to be granted on an individual student basis for up to the balance of the school year with prior written approval through the Department's county office of education.

The Department proposes an amendment at N.J.A.C. 6A:14-4.9(f), which states no waivers or equivalencies pursuant to N.J.A.C. 6A:5 shall be granted to this chapter as of July 6, 1998, to delete the reference to the date since it has passed.

N.J.A.C. 6A:14-4.10 Statewide assessment

This section sets forth the criteria for the participation of students with disabilities in the Statewide assessment system.

The Department proposes an amendment to the first sentence at N.J.A.C. 6A:14-4.10(a)1, which requires students with disabilities to participate in each content area of the general Statewide assessment for their grade, except as provided at N.J.A.C. 6A:14-4.10(a)2. The proposed amendment replaces "each content area of the general Statewide assessment for their grade" with "Statewide assessments in accordance with N.J.A.C. 6A:8-4.1." Since three State assessments in mathematics are administered at the end of each particular mathematics course, which does not necessarily occur at a specific grade level, the proposed amendment will align the provision with the rules concerning the Statewide assessment system at N.J.A.C. 6A:8, Standards and Assessment.

The Department proposes an amendment at N.J.A.C. 6A:14-4.10(a)2, which states, “[s]tudents 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.” The proposed amendment replaces the reference to the APA with “alternate assessment.” The APA no longer is the alternate assessment for students with disabilities.

The Department proposes to delete N.J.A.C. 6A:14-4.10(a)3, which states that “students with disabilities who are required to pass the High School Proficiency Assessment (HSPA) for graduation and have not done so shall participate in the Special Review Assessment (SRA).” The Department no longer administers the HSPA and the SRA is no longer the alternative assessment through which students can demonstrate proficiency for graduation. As proposed for amendment, N.J.A.C. 6A:14-4.11(a) will be consistent with the graduation requirements set forth at N.J.A.C. 6A:8-5.1.

N.J.A.C. 6A:14-4.11 Graduation

This section sets forth the requirements for graduation, including obtaining a State-endorsed diploma, for students with disabilities. The section requires the IEP of a student with a disability who enters a high school program to specifically address graduation requirements. The section requires the student to meet the high school graduation requirements at N.J.A.C. 6A:8-5.1, except as specified in the student’s IEP, which must specify which requirements qualify the student for the State-endorsed high diploma issued by the district board of education responsible for the student’s education.

The Department proposes an amendment to the second sentence of N.J.A.C. 6A:14-4.11(a), which requires a student with a disability to 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 Department proposes to replace "N.J.A.C. 6A:8-5.1(c)" with "N.J.A.C. 6A:8-5.1" because the entire section contains graduation requirements, which are applicable to all students.

Subchapter 5. Providing Educational and Related Services

This subchapter describes the requirements for employing, or contracting for, child study teams. This subchapter also describes the process to operate a Department-approved clinic or agency.

N.J.A.C. 6A:14-5.1 General requirements

This section sets forth the general requirements that district boards of education must follow when employing, or contracting for, child study teams and when providing educational services to students with disabilities.

The Department proposes an amendment at N.J.A.C. 6A:14-5.1(a), which requires each district board of education, independently or through joint agreements, to employ or contract with child study teams, speech correctionists or speech-language specialists, and other school personnel in numbers sufficient to ensure provision of required programs and services. The proposed amendment deletes "speech correctionists" because the title already is included in the definition of "speech-language specialists."

N.J.A.C. 6A:14-5.2 Approval procedures for clinics or agencies

This section contains the procedures for the Department's approval of clinics and agencies that provide educational services to students with disabilities. The section also states that when a clinic or agency has been denied approval, it can appeal the Department's decision to

the Commissioner of Education (Commissioner) according to N.J.A.C. 6A:3. The section further establishes the process by which an approved clinic or agency can obtain Department approval to amend the services provided or a facility location.

Subchapter 6. Requirements for Services in Nonpublic Schools

This subchapter describes the requirements for providing services to students with disabilities in nonpublic schools, including the requirements for the placement of a student with a disability in an accredited nonpublic school.

N.J.A.C. 6A:14-6.1 Equitable participation under IDEA Part B

This section sets forth the requirements regarding equitable participation of students with disabilities who are enrolled by their parents in nonpublic schools or early childhood programs. The section also allows services pursuant to the section to be provided by district board of education personnel or through contracts with individuals or approved clinics or agencies. The section further requires services provided pursuant to this section to be secular, neutral, and non-ideological.

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

This section sets forth the procedures for providing programs and services to students with disabilities in nonpublic schools and describes the procedural safeguards available to nonpublic school students with disabilities and their parents.

The Department is proposing to readopt this section without any amendments because the section will be part of a future rulemaking related to nonpublic schools.

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

This section requires each district board of education of a school district in which a nonpublic school is located to provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds. The section also contains the fiscal management requirements, including reporting requirements, for programs and services provided to nonpublic schools under the subchapter.

The Department is proposing to readopt this section without any amendments since the section will be part of a future rulemaking related to nonpublic schools.

N.J.A.C. 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.

This section sets forth the procedures for a district board of education's annual submission to the Department of a report describing the programs and services provided under the subchapter.

The Department is proposing to readopt this section without any amendments since the section will be part of a future rulemaking related to nonpublic schools.

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

This section contains the procedures for the Commissioner's approval of the placement of students with disabilities in nonpublic schools that are not specifically approved for the education of students with disabilities. According to N.J.S.A. 18A:46-14, school-age students with disabilities may be placed, following the Commissioner's approval, in accredited nonpublic schools that are not specifically approved for the education of students with disabilities.

Students with disabilities may also be placed in nonpublic schools that are not specifically

approved for the education of students with disabilities as a result of a final due process hearing decision issued by an administrative law judge.

Subchapter 7. Receiving Schools

This subchapter sets forth the rules for receiving schools, including the approval procedures for establishing a new approved private school for students with disabilities. This subchapter also sets forth the responsibilities of district boards of education related to the provision of programs to students with disabilities placed in a receiving school. Additionally, this subchapter sets forth the rules for receiving school fiscal management, student records, and monitoring.

N.J.A.C. 6A:14-7.1 General requirements

This section states 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. The section also establishes the responsibilities of district boards of education when placing students with disabilities in receiving schools. Additionally, this section sets forth the reporting requirements for receiving schools.

N.J.A.C. 6A:14-7.2 Approval procedures to establish a new receiving school

This section sets forth the application requirements for new receiving schools to be approved by the Department.

The Department proposes in the section heading and throughout the section, the replacement of “receiving school” with “approved private school for students with disabilities”

to clarify that the Department is responsible for approving only new approved private schools for students with disabilities, which is one type of receiving school.

N.J.A.C. 6A:14-7.3 Amendment procedures for receiving schools

This section sets forth the procedures for receiving schools to amend policies, procedures, services provided, and location of facilities.

N.J.A.C. 6A:14-7.4 Annual procedures for private schools for students with disabilities

This section describes the annual procedures for reporting fiscal information to the Office of School Finance and for obtaining valid certificates of fire inspection and, if applicable, health, HVAC, and sewerage plant inspections.

N.J.A.C. 6A:14-7.5 Responsibilities of district boards of education

This section sets forth the responsibility of district boards of education when the educational program of a student with a disability is provided through contractual agreement as described at N.J.A.C. 6A:14-7.1. This section also establishes the procedures a district board of education must follow prior to, and immediately after, placing a student in a receiving school.

N.J.A.C. 6A:14-7.6 Provision of programs

This section describes the responsibilities of receiving schools, including licensing requirements for staff, discipline procedures, extended school year requirements, and the length of the school day.

N.J.A.C. 6A:14-7.7 Termination or withdrawal from a receiving school

This section sets forth the procedures that must be followed when a receiving school is considering terminating the placement of a student with disabilities, as well as those when parents seek to withdraw students from the receiving school. The section also requires a student

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

N.J.A.C. 6A:14-7.8 Fiscal management

This section sets forth the procedures for making tuition payments, developing written contracts for tuition payments, addressing transportation costs, and submitting a certified audit to the Department.

The Department proposes an amendment at N.J.A.C. 6A:14-7.8(c), which requires daily transportation costs to be paid by the district board of education, to add a cross-reference to the rules governing the transportation of students with disabilities at N.J.A.C. 6A:27-5.1.

N.J.A.C. 6A:14-7.9 Records

This section sets forth the requirements regarding student records that all receiving schools must follow, including the submission of student progress reports to the district board of education at least three times a year or as otherwise stipulated in the contract between the district board of education and the receiving school.

N.J.A.C. 6A:14-7.10 Monitoring and corrective action

This section establishes the process by which the Department monitors receiving schools, including the possible consequences of noncompliance. The section also states that an appeal of the Department's actions resulting from a finding of noncompliance can be made to the Commissioner according to N.J.A.C. 6A:3.

Subchapter 8. Programs Operated by the Departments of Corrections and Human Services and the Juvenile Justice Commission

This subchapter establishes the rules for special education programs operated by State departments and/or agencies that provide services to students with disabilities.

N.J.A.C. 6A:14-8.1 General requirements

This section sets forth the requirements for special education programs provided in State facilities, including the development of a special education plan, the length of the school day, implementation of student IEPs, and maintenance of student records. Additionally, this section establishes the procedures for the placement of a student in a State facility by a public agency other than a district board of education.

The Department proposes an amendment to the second sentence of N.J.A.C. 6A:14-8.1(e), which requires the parent to receive notification of the release of student records to a State facility when a student is placed there, to add “or adult student” after “parent” because a student placed in a State facility can be 18 years old or older.

N.J.A.C. 6A:14-8.2 Procedural safeguards

This section sets forth the procedural safeguards available to students with disabilities in State facilities.

N.J.A.C. 6A:14-8.3 Provision of programs

This section allows a residential State facility to recommend placement of a student with a disability in a school district and requires the State facility to pay tuition to the district board of education where the student is placed. This section also sets forth the requirements for certification of staff serving students with disabilities in State facilities. Additionally, this section prescribes the manner in which day school programs operated by the Department of Children and Families must function.

Subchapter 9. Monitoring, Corrective Action, and Complaint Investigation

This subchapter establishes the procedures for Department monitoring of district boards of education and receiving schools, as well as any required corrective action. This subchapter also sets forth the rules concerning the conduct of special education complaint investigations.

N.J.A.C. 6A:14-9.1 Monitoring and corrective action

This section sets forth the Department's process for monitoring school districts. Additionally, this section sets forth the procedures for correcting identified areas of noncompliance.

The Department proposes to delete N.J.A.C. 6A:14-9.1(b)1, which requires monitoring procedures to include a self-assessment conducted by the program being monitored, because self-assessments are no longer required as part of the Department's monitoring procedures.

The Department proposes to delete N.J.A.C. 6A:14-9.1(d), which requires a public or private agency that receives a final report that indicates noncompliance in addition to any areas of need identified through self-assessment to revise the improvement plan and submit it to the Department. The proposed deletion will align this section with the Department's current monitoring procedures.

The Department proposes to delete N.J.A.C. 6A:14-9.1(f), which requires the Department to review the improvement plan and notify the agency if it is acceptable, because improvement plans are no longer utilized. Rather, the Department directs corrective action activities following findings of noncompliance.

The Department proposes to delete N.J.A.C. 6A:14-9.1(g), which requires the Department to notify the agency of the action that will be taken if an improvement plan is not submitted, found unacceptable, or not implemented. The Department also proposes to delete N.J.A.C. 6A:14-9.1(h), which states an appeal of the denial of approval of an improvement plan,

imposition of sanctions, or determination of noncompliance may be made to the Commissioner according to N.J.A.C. 6A:3. The proposed deletions reflect that improvement plans are no longer submitted.

N.J.A.C. 6A:14-9.2 Complaint investigation

This section sets forth the Department's process for resolving requests for complaint investigations, including early resolution, investigation, and issuance of complaint investigation reports.

Subchapter 10. Early Intervention Programs

This subchapter establishes the procedures for providing services to children with disabilities in early intervention programs.

N.J.A.C. 6A:14-10.1 Early intervention programs serving children between birth and age three

This section sets forth the collaboration between the Department and the Departments of Health and Human Services in administering early intervention programs.

N.J.A.C. 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

This section establishes requirements that apply when a district board of education has developed an IEP for a child age three and determines to continue the child in an early intervention program for the balance of the school year.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments apply to the provision of special education programs and services to students with disabilities in the State. The rules proposed for

readoption with amendments set forth the responsibilities of district boards of education regarding the identification, evaluation, and determination of eligibility of students with disabilities and the delivery of special education and related services to students with disabilities.

The rules proposed for readoption with amendments also govern the development of IEPs and the provision of services and programs, as well as the special education dispute resolution system and procedures for monitoring special education programs and conducting special education complaint investigations.

The rules proposed for readoption with amendments provide students with disabilities, parents, school district officials, and the general public with concise rules governing the provision of special education and related services to students with disabilities. The rules proposed for readoption with amendments govern the provision of a free, appropriate public education to students with disabilities, and provides all affected persons and entities with the guidance necessary to obtain and/or provide free, appropriate public education for students with disabilities as required by State and Federal law. The provision of clear and detailed guidance helps ensure the services provided to each student with a disability are appropriate.

The rules proposed for readoption with amendments also enhance learning opportunities for students with disabilities through guaranteed procedural protections and provide a positive social impact for students with disabilities.

The proposed amendments will have no additional social impact as they are designed to update the rules and processes concerning the delivery of special education programs and related services to students with disabilities.

Economic Impact

Special education is funded through a combination of Federal, State, and local funds. Local funds are raised by district boards of education through property taxes to pay for the education of nondisabled and disabled students. Eligible school districts receive State aid that may be utilized for the education of all students, including students with disabilities. School districts also receive State aid for special education in addition to the Federal IDEA Part B, and Federal and State preschool monies. Expenditure of these funds is governed by IDEA and its implementing regulations, as well as State law.

The Department does not anticipate that the proposed amendments will create any additional expenses for district boards of education. Generally, the proposed amendments do not grant new entitlements or impose additional responsibilities on the regulated community beyond those currently in place and funded through the referenced sources. In addition, many of the rules, such as permitting excusals of IEP team members from meetings, permitting amendment of IEPs without a meeting, allowing parents and district boards of education to waive reevaluations, and increasing the numbers of students allowed in in-class programs (which could eliminate the need for additional classes and the related expenditures) can help to limit administrative and other expenses for school districts.

Moreover, the Department does not anticipate the proposed amendments will create additional costs for school leaders or individual educators. The proposed amendments do not change the responsibilities of district boards of education and school leaders in ensuring the provision of special education and related services to students with disabilities.

Finally, the Department does not anticipate that the proposed amendments will have an additional economic impact on the Department or other State agencies.

Federal Standards Statement

The rules proposed for readoption with amendments are in compliance with Federal requirements under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., and its implementing regulations, and will continue to advance the mission to ensure the provision of special education services and programs to students with disabilities. The proposed amendments ensure the chapter remains consistent with Federal regulations at 34 CFR 300.300.

Jobs Impact

The Department does not anticipate that rules proposed for readoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey because the rules proposed for readoption with amendments concern the provision of special education and related services to students with disabilities.

Regulatory Flexibility Analysis

The proposed rules for readoption with amendments impact district boards of education, approved private schools for students with disabilities, and clinics and agencies.

Approved private schools for students with disabilities and clinics and agencies could be considered small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments apply to approximately 150 approved private schools for students with disabilities and approximately 200 clinics and agencies. The rules proposed for readoption with amendments pertaining to approved private schools for students with disabilities, clinics, and agencies reflect the minimal amount of paperwork and recordkeeping appropriate to strike a balance between the need to ensure that

services are provided in an appropriate manner, and the desire to minimize the burden on small businesses. No professional services should be necessary to comply with the rules proposed for readoption with amendments. There are no capital costs and minimal or no compliance costs associated with the rules proposed for readoption with amendments. There should be no adverse economic impact on small businesses.

The rules for establishing a clinic or agency, or for amending the services offered by a clinic or agency, apply only to clinics or agencies with three or more professionals and, thereby, reduce reporting requirements for clinics or agencies with a small professional staff.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern the provision of special education and related services to students with disabilities.

Smart Growth Development Impact Analysis

The proposed rules for readoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments concern the provision of special education and related services to students with disabilities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood that the rules proposed for readoption with amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments concern the provision of special education and related services to students with disabilities.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:14.

Full text of the proposed amendments follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

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) (No change.)
- (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. – 2. (No change.)
 - 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] **that** 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] **students with disabilities**; and

4. (No change.)

(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] **that** 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] **students** who are deaf and/or hard of hearing are functioning properly.

(g) – (h) (No change.)

(i) A school district shall not require a [child] **student** to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. [§§801] §§ 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 **board of education** 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 (**county office**), that [it] **the plan** 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 office[s], shall require the [LEA] **district board of education** 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 **that are** 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] **who** have been suspended or expelled from school;
2. Full educational opportunity **is provided** to all students with disabilities [is provided];
3. All students with disabilities[,] who are in need of special education and related services, **regardless of the severity of their disabilities**, 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 **who** are located, identified, [and] evaluated, and **determined eligible are** 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] **at 42 U.S.C. [§§ 11431] §§ 11431 et seq.**;
5. An individualized education program (**IEP**) 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. – 8. (No change.)
9. The compilation, maintenance, access to, and confidentiality of student records are in accordance with N.J.A.C. 6A:32-7, **Student Records**;
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] **IEP** 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] **Services are provided to** 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 **approved** private schools **for students with disabilities** 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] **professional development** 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] **students** with disabilities;

(2) Enhance the ability of teachers [and others], **paraprofessionals, and related service providers** to use strategies, such as **positive behavioral supports and interventions**, to address the conduct of students with disabilities that impedes [the] **student** learning [of students with disabilities and others];

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

(4) [Insure] **Ensure** 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] **for** 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 **students who are** blind or [print-disabled students] **have print disabilities** in a timely manner, consistent with a plan developed by the **school** district;

17. For students with disabilities who are potentially eligible to receive services from the **New Jersey Children’s System of Care, within the Division of Children and Families (formerly provided by the** Division of Developmental Disabilities in the Department of Human Services), the **school** district will provide **to parents**, 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. – 19. (No change.)

(c) Each district board of education shall provide **the Department of Education** written assurance of its compliance with the requirements of (b)1 through 19 above.

(d) [Annually] **In accordance with instructions from the Department of Education**, each district board of education shall describe[, in accordance with instructions from the Department of Education,] **annually** 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] **provide the Department of Education:**

1. (No change.)
2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, **and** develop [individualized education programs] **IEPs**, [provide] **and providing** related services and/or instruction to students with disabilities, [and] **as well as** 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] §§ **1400** et seq.), including, but not limited to, the number of students with disabilities who [are]:
 - i. [Exiting] **Are exiting** education;
 - ii. [Subject] **Are subject** to suspensions and expulsions;
 - iii. [Removed] **Have been removed** to interim alternative education settings;
 - iv. [Participating] **Are participating** in Statewide assessments; **and**
 - v. [Postsecondary] **Have achieved preschool and postsecondary** transition outcomes[; and].
 - [vi. Preschool outcomes.]

(f) [Upon request, reports in] **In** addition to [those under] **the reports in** (e) above, **each district board of education** shall [be submitted] **submit** to the Department of Education **other reports upon request**, 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 **school** district to provide input to the **school** 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 **Part** 300[.1 et seq.], which terms are incorporated by reference herein.

...

"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.

“Alternate assessment” means the same as “alternative assessment for students with disabilities” as defined at N.J.A.C. 6A:8-1.3.

"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.] **Part 300**, [as amended and supplemented,] incorporated by reference herein, and reproduced at [chapter] **N.J.A.C. 6A:14** 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.] **Part 300**, [as amended and supplemented,] incorporated by reference herein, and reproduced at [chapter] **N.J.A.C. 6A:14** 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. (No change.)
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. – 4. (No change.)

“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) **by the State agency empowered to do so** 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.

...

"District board of education" means, **except as defined otherwise**, the school district of residence, the [board of trustees of a] charter school **board of trustees**, the State agency, or other public education agency [which] **that** acts as the **school** district of residence for the location, identification, evaluation, determination of eligibility, development of an [individualized education program] **IEP** and the provision of a free, appropriate[,] public education to students with disabilities [except as defined otherwise].

...

"Early childhood program" means a general education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by [a governmental agency] **the Department of Children and Families**.

...

["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] **that** sets forth a **student's** 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] a student's [individualized education program] **IEP**. 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] **his or her** 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] **a student's native** language [of the student].

"Nonpublic school" means an elementary or secondary school, other than a public school, within the State providing education in kindergarten through grade 12, or any combination of grades in which a student age five through 20 may fulfill compulsory school attendance and that 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] **school** district in which the parent resides.

"Office" means the Office of Special Education Policy and Dispute Resolution in the Department of Education.

"Parent" means the natural or adoptive parent, the legal guardian, [foster] **resource family** 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)], **or** 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] **an** adult student [as defined above].

...

"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] **N.J.A.C. 6A:14** 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] **N.J.A.C. 6A:14** Appendix C.

...

"Statewide assessment" means the same as "assessment" as defined at N.J.A.C. 6A:8-1.3 and includes the alternate assessment.

...

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

1. (No change.)
2. "Age five" means the attainment of age five by the month and day established **by the district board of education** 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. (No change.)

...

"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] **N.J.A.C. 6A:14** Appendix D. For students under age 16, "transition services" is defined as set forth [in] **at** 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] **a State** agency [of the State], is a [foster] child **in resource family care** for whom the [foster] **resource family** 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:14-2.2 Surrogate parents, wards of the State, and [foster] **resource family** 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. (No change.)
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] **resource family** parent, the [foster] **resource family** 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] § **11434(a)6** and **N.J.A.C. 6A:17-1.2**.

(b) (No change.)

(c) If the district **board of education** 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) (No change.)

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

1. Have no interest that conflicts with [those] **the interest** of the student he or she represents;

2. – 4. (No change.)

5. [If] **Complete a criminal history review, pursuant to N.J.S.A. 18A:6-7.1, 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] **resource family** parent, and the [foster] **resource family** 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] **resource family** 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. – 2. (No change.)

(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] **district board of education** 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] **resource family** parent[, unless that person is unwilling to do so,] shall serve as the parent, [pursuant to N.J.A.C. 6A:14-1.3] **unless that person is unwilling to do so**. If there is no [foster] **resource family** parent, or the [foster] **resource family** 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] **appointing** a surrogate parent, and [obtain] **obtaining** all required consent from, and [provide] **providing** written notices to, the surrogate parent.

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

(a) Consent shall be obtained:

1. – 2. (No change.)

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] **in accordance with** N.J.A.C. 6A:32-7;

5. – 9. (No change.)

(b) For a ward of the State, a district board of education [must] **shall** 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] **the action** set forth in (a)1, 3, and 4 above, if a parent refuses to provide consent and the district **board of education** and the parent have not agreed to other action, the district **board of education** may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

(d) (No change.)

(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. (No change.)

3. When a parent revokes consent for special education and related services, the [school] district **board of education** shall provide written notice to the parent within 10 days of receipt of the written revocation of consent. The [school] district **board of education** 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] **that** 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, **or** 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, **or** 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. (No change.)
 2. An explanation of why [it] **the district board of education** is taking such action;
 3. (No change.)
 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] **action proposed or denied** 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] **A** copy of the procedural safeguards statement published by the [New Jersey] Department of Education [which] **that** 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. – iii. (No change.)
 - iv. When a request for a complaint investigation is submitted to the Department **of Education**; and
 - v. (No change.)
- (h) Written notice according to (g) above shall be provided to the parent as follows:
1. (No change.)

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 **board of education** takes action in an attempt to resolve the disagreement; or

ii. (No change.)

4. The **school** 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 **board of education** determine that disciplinary action requires immediate implementation. Such written notice shall be provided [according to] **in accordance with** the following:

i. – ii. (No change.)

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] **district board of education** 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] **district board of education** 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) **in addition to the notice required in (g) above.**

(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, **or** 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, **if feasible**, as long as the requirements for notice of a meeting according to [(g)7ii] **(g)** 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. (No change.)

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 **school** district's programs;

iii. – v. (No change.)

vi. Other appropriate individuals at the discretion of the parent or [school] district **board of education**; and

vii. For an initial eligibility meeting, certified [school] **district board of education** 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. (No change.)

ii. [Not less than] **At least** 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 **school** district's programs shall participate;

(2) [The general education teacher as] **As** a member of the IEP team, **the general education teacher** must **participate**, to the extent appropriate, [participate] in the development, review, and revision of the student's IEP;

(3) (No change.)

(4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications, or supports for [school] **district board of education** personnel that will be provided for the student;

iii. [Not less than] **At least** one special education teacher of the student or, where appropriate, [not less than] **at least** 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 **school** district's programs shall participate;

iv. – v. (No change.)

vi. A representative of the responsible district **board of education** who:

(1) – (3) (No change.)

(4) Shall be the child study team member or other appropriate [school] **district board of education** personnel, including the special education administrator or principal;

vii. At the discretion of the parent or [school] district **board of education**, 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 **board of education**) who invited the individual;

viii. – x. (No change.)

3. – 4. (No change.)

5. Notice of meetings shall indicate the purpose, time, location, and participants.

i. (No change.)

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] **for** the student; and

(2) The [school] **district board of education** 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) (No change.)

(2) Indicate that the [school] **district board of education** will invite the student; and

(3) (No change.)

6. (No change.)

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] **district board of education** shall maintain a record of its attempts to arrange the meeting, including, but not limited to:

i. – iii. (No change.)

8. Participants at the IEP meeting shall be allowed to use an [audio-tape recorder] **audio recording device** 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] **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. (No change.)

10. [For a] **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. – ii. (No change.)

(l) The following activities shall not be considered a meeting that requires parental participation:

1. Informal or unscheduled conversations involving [school] district **board of education** 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 **board of education** 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. – 4. (No change.)

(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) (No change.)

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

1. (No change.)

2. [That the] **The** parent understands the content of the notice; and

3. (No change.)

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. (No change.)

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. – 3. (No change.)

(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. – ii. (No change.)

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

2. Any standardized tests that are administered:

i. (No change.)

ii. Are administered by certified personnel trained in conformance with the instructions provided by [their] **the standardized tests'** producer(s);

3. – 4. (No change.)

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 **the** procedure purports to measure, rather than the impairment, unless that is the intended purpose of the testing;

6. The evaluation is conducted **in accordance with the procedures at N.J.A.C. 6A:14-3** by a multi-disciplinary team of professionals consisting of [a minimum of] **at least** 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] **At least** one evaluator shall be knowledgeable in the area of the suspected disability; and

7. (No change.)

(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] **the district board of education's** 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 **board of education** initiates a due process hearing to show that its evaluation is appropriate and, **following the hearing**, a final determination to that effect is made [following the hearing].

i. Upon receipt of the parental request, the [school] district **board of education** 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 **board of education** 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 **board of education** shall request the due process hearing.

2. Any independent evaluation [purchased] **obtained** at [public] **the district board of education's** expense shall:

i. (No change.)

ii. Be obtained from another public [school] district **board of education**, educational services commission, jointure commission, a clinic or agency approved [under] **pursuant to** N.J.A.C. 6A:14-5, or a private practitioner[,] who is appropriately certified and/or licensed, where a license is required.

3. (No change.)

4. Any independent evaluation submitted to the district **board of education**, 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 **board of education** may ask the parent to explain why he or she objects to the [school district's] **district board of education's** evaluation. However, the [school] district **board of education** shall not require [such] an explanation and the [school] district **board of education** shall not delay either providing the independent evaluation or initiating a due process hearing to defend the [school district's] **district board of education's** evaluation.

6. For any independent evaluation, whether purchased at [public] **the district board of education's** or private expense, the [school] district **board of education** shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.

7. (No change.)

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. (No change.)

2. Mediation may be agreed to by a parent and [school] district **board of education** in place of the resolution meeting described [in] **at 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] **who** 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] **State** 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. – ii. (No change.)

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. (No change.)

v. When appropriate, adjourn the mediation to a date certain[, but] **that is** 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. (No change.)

6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement [which] **that** 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. – 9. (No change.)

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] **at** 20 U.S.C. [§1415(k) as amended and supplemented] § **1415(k)** (see [chapter] **N.J.A.C. 6A:14** 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 90th 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] **shall** 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 **board of education** has failed to implement the agreement or part of the agreement, the Office [of Special Education Programs] shall order the district **board of education** 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 **parent's** satisfaction [of the parent]; or

ii. (No change.)

(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] **the district board of education** 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] **the district board of education** 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, **and** the name of the school the student is attending. [and] **The written request also** 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 **board of education** pursuant to (e) below, the party against whom a request for a due process hearing is directed shall **provide**, 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 **board of education** has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the district **board of education** 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] **district board of education** proposed or refused to take the action raised in the request for a due process hearing;

2. (No change.)

3. A description of each evaluation procedure, assessment, record, or report the [agency] **district board of education** 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] **district board of education's proposed** or [refusal] **refused action**.

(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] § **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]. **An** administrative law judge will determine whether the notice meets the requirements of 20 U.S.C. [§1415] § **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. – ii. (No change.)

(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] **this chapter** 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 **through a resolution meeting** to resolve the matter before proceeding to a due process hearing [in a resolution meeting]. The [school] district [must] **board of education shall** 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 **board of education** who has authority to make decisions on behalf of the [school] district **board of education**.

i. The [school] district **board of education** 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 **board of education** shall be entitled to bring its attorney to a resolution meeting.

2. – 3. (No change.)

4. If a [request for a] due process hearing **request** 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. – 7. (No change.)

8. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the [office] **Office** of [special education programs]

Administrative Law in accordance with N.J.A.C. 6A:14-2.6.

i. (No change.)

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

iii. (No change.)

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

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

ii. If the parent and a representative of the district **board of education** 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 **due process** 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] **Office** of [administrative law] **Administrative Law** after 30 days from the date the request was received.

11. (No change.)

(i) After a petition requesting a due process hearing is submitted to the Office [of Special Education Programs], [it] **the petition** may [only] be amended **only** 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 **board of education** 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] **the** 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. - 3 (No change.)

(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] **in accordance with** N.J.A.C. 1:6A.

1. (No change.)

(m) (No change.)

(n) To remove a student with a disability when [school] **district board of education** personnel maintain that it is dangerous for the student to be in the current placement and the parent and district **board of education** 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)] **§ 1415(k)** and its implementing regulations at 34 CFR [§§ 300.1 et seq.] **Part 300**;

1. (No change.)

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

1. (No change.)

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] **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] **contact a representative** 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 **of receipt of the request by the Office;**

iv. (No change.)

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 **expedited** 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 **expedited** due process hearing without exceptions or extensions.

(p) – (q) (No change.)

(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 **only** for the following issues:

i. – iv. (No change.)

(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. (No change.)

(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] **district board of education** responsible for implementing the IEP fails to implement a hearing decision of the Office of Administrative Law with respect to the student's program or services, a request for enforcement may be made by the parent or the parent's attorney on behalf of the student. The request shall be made in writing to the [State] Director of the Office [of Special Education Programs], Department of Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred. The request shall include a copy of the decision issued by the Office of Administrative Law. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured

separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur. Upon receipt of this request, the district board of education shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent. The Office [of Special Education Programs] shall determine the implementation of the decision. If it is determined that the district **board of education** has failed to implement the decision or part of the decision, the Office [of Special Education Programs] shall order the district **board of education** 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] **at** 20 U.S.C. [§1415(k)4 as amended and supplemented] § **1415(k)4**. (See [chapter] **N.J.A.C. 6A:14** 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] **the** 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 **of** 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 limitation[s] period for filing appeals[,] and, [are] instead, **shall be** 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] **§ 794a**, shall be processed in accordance with this section, except as follows:

1. (No change.)
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] **district board of education** 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 **the procedures for** 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. (No change.)

2. The district board of education is not required by 20 U.S.C. [§§1400] §§ **1400** et seq., or this chapter to provide [services], during periods of removal, **services** to a student with a disability who has been removed from his or her current placement for 10 school days or less in [that] a 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] **District board of education** personnel may **consider**, 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] **district board of education** 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. (No change.)

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] **District board of education** 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] **that** 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] § **1415(k)**. (See [chapter] **N.J.A.C. 6A:14** 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)] § **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] **district board of education** 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. (No change.)

(f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury [under] **in accordance with** 20 U.S.C. [§1415(k)] § **1415(k)** and its implementing regulations[,] at 34 CFR [§§300.1 et seq.] **Part 300**, or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. [§1415(k)] § **1415(k)** and its implementing regulations[,] at 34 CFR [§§ 300.1 et seq.] **Part 300**, the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. [§1415(k)] § **1415(k)** and its implementing regulations[,] at 34 CFR [§§ 300.1 et seq.] **Part 300**,

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)] § **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:32-7.
- (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] pursuant to N.J.A.C. 6A:32-7 without unnecessary delay and before any meeting regarding the IEP.
- (c) Any consent required for students with disabilities [under] **pursuant to** N.J.A.C. 6A:32-7 shall be obtained according to N.J.A.C. 6A:14-1.3 ["**(definition of consent["])** and 2.3(a) and (b).

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

- (a) Except as provided [in] **at** 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 **board of education** 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 **board of education** to reimburse the parents for the cost of [that] enrollment if the administrative law judge finds that the district **board of education** had not made a free, appropriate public education available to [that] **the** student in a timely manner prior to [that] enrollment and that the private placement is appropriate.

1. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge [according] **pursuant** to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if [it] **the parental placement** 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] **at** (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 **board of education**;

2. [At] **If, 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 **board of education** proposed a reevaluation of the student and provided notice [according] **pursuant** to N.J.A.C. 6A:14-2.3(g) and (h), but the parents did not make the student available for [such evaluation] **the reevaluation**; or

4. (No change.)

(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 **read and/or** write in English;

2. (No change.)

3. The [school] **district board of education** prevented the parent from providing [such] **the notice specified in (c)1 and 2 above;** or

4. (No change.)

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] **IEP**, 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, **shall** 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. – 2. (No change.)

3. May provide services to [the] educational staff [with regard to] **regarding** techniques, materials, and programs. Services include, but are not limited to, the following:

i. – ii. (No change.)

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

4. – 5. (No change.)

6. May participate on [Intervention] **intervention** and [Referral Services] **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] **A child** study team member[s], or a speech-language

specialist[s] when [they act] **acting** as a member[s] 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) (No change.)

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 **school** 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 **students with disabilities who are** migrant [and] **and/or** 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] **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 **school** district of residence of the **student's** parent [of the student].

ii. For nonpublic elementary or secondary school students, the child-find obligations shall be the responsibility of the **school** 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] **intervention** and [Referral Services program] **referral services** according to N.J.A.C. 6A:16-8, as well as other general education strategies;

ii. Referral by **the school district's** instructional, administrative, and other professional staff [of the local school district], parents, and [state] **State** agencies, including the [New Jersey] Department of Education and agencies concerned with the welfare of students.

iii. – iv. (No change.)

(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 **former** Abbott **school** districts, the system of assessment and interventions within general education programs according to N.J.A.C. [6A:10A-3.1] **6A:13** 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. (No change.)

(d) A direct referral to the child study team may be made, **pursuant to (a)3ii above**, 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. (No change.)

(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 **school** 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] **pursuant** 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] **including** a request for consent to evaluate, if an evaluation will be conducted[, according] **pursuant** 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]

Early Intervention System. The [district representative] **child study team member representing the district board of education** at the transition planning conference shall:

- i. (No change.)
- ii. Provide the parents written district **board of education** registration requirements;
- iii. Provide the parents written information on available **school** district programs for preschool students, including options available for placement in general education classrooms; and
- iv. Provide **to the parent** [a] **the** 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 **by Early Intervention Service providers** to the district **board of education** at least 120 days prior to the preschooler attaining age three.

- i. (No change.)
3. (No change.)
4. [For students ages five to 21, when] **When** the suspected disability **for students ages five to 21** 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] **When** the suspected disability **for students ages five to 21** 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] **in accordance with** (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 **the** procedures [in] **at** 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, **in accordance with 20 U.S.C. § 1415(k)(5)**. (See [chapter] **N.J.A.C. 6A:14** Appendix A.)

(g) Audiometric screening [according] **pursuant** to N.J.A.C. 6A:16-[2.2(k)3]**2.3(k)3** shall be conducted for every student referred to the child study team for a special education evaluation.

(h) (No change.)

(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] **§ 1412(c)3** and its implementing regulations at 34 CFR [§§300.1 et seq.] **Part 300** regarding child find. (See [chapter] **N.J.A.C. 6A:14** Appendix E.)

6A:14-3.4 Evaluation

(a) The child study team, the parent, and the [regular] **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 **school** district's programs shall:

1. (No change.)

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

i. – iii. (No change.)

3. (No change.)

(b) Prior to conducting any assessment as part of an initial evaluation, the district **board of education** 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 **board of education** may file for a due process hearing pursuant to N.J.A.C. 6A:14-2.7 to compel consent to evaluate.

(d) (No change.)

(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 **student's** IEP [for the student] shall be completed within 90 calendar days.

1. (No change.)

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] **the initial evaluation** was completed, and the new district **board of education** is making progress [so as]

to ensure a prompt completion of the evaluation, and the district **board of education** 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] **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] **An initial** evaluation shall include at least two assessments and shall be conducted by at least two members of the child study team in [those] **the** areas in which [they] **the child study team members** 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] **that** shall be:

i. – iv. (No change.)

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) (No change.)

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

ii. – iii. (No change.)

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

v. (No change.)

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

5. (No change.)

(g) When the suspected disability is a disorder of articulation, voice, or fluency [according] **pursuant** 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 **school** 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] **pursuant** to N.J.A.C. 6A:14-[3.3(e)5]**2.3(a)1**;

3. Conduct an assessment [according] **pursuant** 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] **The** assessment shall fulfill the requirement for multi-disciplinary evaluation as required in [(d)] **(f)** above; and

4. (No change.)

(h) A written report of the results of each assessment shall be prepared. At the discretion of the district **board of education**, 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. (No change.)

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. (No change.)

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. – iii. (No change.)

iv. The relationship of [that] **the** behavior to the student's academic performance;

v. – vi. (No change.)

vii. The determination concerning the effects of environmental, cultural, or economic disadvantage;

viii.-ix. (No change.)

x. Whether there are strengths [or] **and/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) – (8) (No change.)

5. Additionally, each **child study** team member shall certify, in writing, whether his or her report is in accordance with the conclusion of **the student's** eligibility [of the student]. If his or her report does not reflect the conclusion of eligibility, the **child study** 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. (No change.)

ii. Not be required to include more than the assessment conducted pursuant to the [district's] **district board of education's** response to scientifically based intervention methodology in the evaluation of a student; and

iii. (No change.)

(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) (No change.)

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] **pursuant** 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] **at least** 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] **at** 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] **mathematics**, or due to limited English proficiency **for English language learners (ELLs)**.

(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. ["Auditorily impaired"] **“Auditory impairment”** corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. ["Auditorily impaired"] **“Auditory impairment”** 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] **that** adversely affects the student's educational performance.

2. ["Autistic"] **“Autism”** means a pervasive developmental disability [which] **that** 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 **an** emotional [disturbance] **regulation impairment** 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"] **“Intellectual disability”** 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. (No change.)

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) (No change.)

(2) The ability to function socially without direct and close supervision in home, school, and community settings; and

(3) (No change.)

iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby, [in] **on** 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] **“Communication impairment”** means a language disorder in the areas of morphology, syntax, semantics, and/or pragmatics/discourse [which] **that** 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. (No change.)

ii. When the area of suspected disability is a disorder of articulation, voice, or fluency, the student shall be evaluated [according] **pursuant** to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services [according] **pursuant** to N.J.A.C. 6A:14-3.6(a).

5. ["Emotionally disturbed"] "**Emotional regulation impairment**" 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. – v. (No change.)

6. ["Multiply disabled" corresponds to "multiply handicapped" and "multiple] "**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] **include intellectual disability-blindness and intellectual disability-orthopedic impairment**. The

existence of two disabling conditions alone shall not serve as a basis for a classification of [multiply disabled] **multiple disabilities**. 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] **multiple disabilities**." [Multiply disabled] **Multiple disabilities** does not include deaf-blindness.

7. (No change.)

8. ["Orthopedically impaired" corresponds to "orthopedically handicapped" and] **“Orthopedic impairment”** 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] **impairment"** 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] **As measured by 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) – (5) (No change.)

ii. (No change.)

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 **an** emotional [disturbance] **regulation impairment** 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.-ii. (No change.)

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] **intellectual** deficits, emotional [disturbance] **regulation impairment**, or environmental, cultural, or economic disadvantage.

iv. [The] **If the** district [shall, if it] **board of education** utilizes the severe discrepancy methodology, **the district board of education shall** 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] "**Visual impairment**" 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 **New Jersey** 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] **that** adversely affects a student's educational performance; and/or

2. A language disorder [which] **that** meets the criteria [of] **at** 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] **pursuant** 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] **at** (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

1. (No change.)

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] **pursuant** 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] **at least** 10 calendar days prior to the meeting.

(d) The IEP shall be developed in a meeting [according] **pursuant** to N.J.A.C. 6A:14-2.3[(k)2] **and 3.7**. 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) (No change.)

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] **the** 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 **in effect** for every student who is receiving special education and related services from the district **board of education**;

2. – 3. (No change.)

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] **pursuant** to N.J.A.C. 6A:14-2.3[(k)2] **and this section** for students classified eligible for special education and related services or [according] **pursuant** 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. (No change.)

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

3. – 4. (No change.)

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

6. (No change.)

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. (No change.)

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. (No change.)

11. – 12. (No change.)

(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] **provision(s)** of the IEP and the district **board of education** agrees;

2. The [school] district **board of education** provides the parent a written proposal to amend a [provision or provisions] **provision(s)** 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 **board of education**; and

4. If an IEP is amended pursuant to this subsection, [such] **the** 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 **education** curriculum; or

ii. (No change.)

2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall **be related**, as appropriate, [be related] to the New Jersey Student

Learning Standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, [student specific,] **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. (No change.)

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] **The** special education and related services and supplementary aids and services shall be based, to the extent practicable, on [peer reviewed] **peer-reviewed** research. A statement of the program modifications or supports for school personnel that shall be provided for the student:

i. – iii. (No change.)

5. – 6. (No change.)

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] **pursuant** 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] **that** specifies the projected date for the beginning of the services and modifications described [in] **at** (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] **Consistent with N.J.A.C. 6A:14-4.11**, 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] **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) (No change.)

(2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment, and, if appropriate, independent living;

iii.-iv. (No change.)

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] **the** 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 **for a student with a disability**, 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] **is** 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) - (5) (No change.)

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. – 15. (No change.)

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] **the** 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] **board of education** 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 **education** 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] **IEP**, 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) (No change.)
- (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. – 2. (No change.)
- (j) The IEP team shall review:
 - 1. Any lack of expected progress toward the annual goals and in the general **education** curriculum, where appropriate;
 - 2. (No change.)
 - 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. – 5. (No change.)
- (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 **by the district board of education** 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) (No change.)

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] **earlier** 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 **board of education** both agree that a reevaluation prior to the expiration of one year as set forth [above] **in this subsection** is warranted. When a reevaluation is conducted [sooner] **earlier** than three years from the previous evaluation as set forth [above] **in this subsection**, the reevaluation shall be completed in accordance with the timeframes in (e) below.

1. (No change.)

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

1. (No change.)

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. (No change.)

- 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 **student's** academic, developmental, functional, and behavioral needs [of the student] and how they should appropriately be addressed in the student's IEP; and

- iv. (No change.)

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] **pursuant** to N.J.A.C. 6A:14-2.3 to the student's parents of [that] **the IEP team's** 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. (No change.)

4. (No change.)

(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] **pursuant** to N.J.A.C. 6A:14-2.3.

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

(d) (No change.)

(e) Unless the parent and district board of education agree to waive a reevaluation, all requirements of this section for performing a reevaluation, **as applicable**, 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] **three-year** timeframe from completion of the prior evaluation or reevaluation, whichever occurs [sooner] **earlier**.

(f) – (g) (No change.)

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. – 7. (No change.)

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] **student's IEP**.

9. – 12. (No change.)

(b) School personnel may give advice to parents regarding additional services [which] **that** 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] **IEPs** 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] **the** county [offices] **office of education**.

(c) (No change.)

(d) District board of education operated special class programs for [preschoolers] **preschool children** with a [disabilities] **disability** 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] **Classes for preschool children with a disability** operated by a district board of education shall operate at least as long as any district **board of education** 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] **the county [offices] office of education**.

(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 **school** 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 parents and district board of education agree**. If the appropriate [school] district **board of education** staff do not agree to implement the current IEP, the district **board of**

education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the **school** district, develop and implement a new IEP for the student.

2. If the student transfers from an out-of-State **school** district, the appropriate [school] district **board of education** staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the **school** district, develop and implement a new IEP for the student.

3. The appropriate [school] district **board of education** 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 **school** 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] **of education pursuant** 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) – (j) (No change.)

(k) [The] **Prior to the implementation of the IEP, 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) – (m) (No change.)

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] **peers** 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. – 4. (No change.)

5. Placement is based on his or her [individualized education program] **IEP**;

6. – 7. (No change.)

8. Consideration is given to:

- i. Whether the student can be educated satisfactorily in a [regular] **general education** classroom with supplementary aids and services;
 - ii. A comparison of the benefits provided in a [regular class] **general education classroom** and the benefits provided in a special education [class] **classroom**; and
 - iii. (No change.)
9. – 10. (No change.)
11. [When determining] **Determinations regarding** 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] **peers** in those services and activities to the maximum extent appropriate.

6A:14-4.3 Program options

- (a) (No change.)
- (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] **in this subsection** shall be available to meet the needs of the student. Alternative educational program options include placement in the following:

1. [Single subject] **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 **county** vocational [and technical] school **district**;

5. – 7. (No change.)

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] **the county office of education**;

10. An accredited nonpublic school [which] **that** is not specifically approved for the education of students with disabilities [according] **pursuant** to N.J.A.C. 6A:14-6.5;

11. (No change.)

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) (No change.)

(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 **district** board of education according to the following:

1. [Such] **The** early childhood program shall be licensed or approved by a governmental agency;

2. – 4. (No change.)

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 **to the maximum extent appropriate.**

(b) A teacher aide may provide supplementary support to a [student or students] **student(s)** with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:

1. – 4. (No change.)

(c) (No change.)

(d) The district board of education shall provide **to** 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. – 3. (No change.)

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

(a) – (h) (No change.)

(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 **general education teacher shall have** 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) (No change.)

(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] **10** 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) – (p) (No change.)

[(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] **IEPs**. 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 New Jersey Student Learning Standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The [regular] **general** education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:

1. – 3. (No change.)

(b) (No change.)

(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] **intellectual** disabilities or severe to profound [cognitive] **intellectual** disabilities.

(d) (No change.)

(e) Instructional group sizes for preschool, elementary, and secondary special class programs shall not exceed the limits listed **in the table** 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 **in the table** below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

I	II	III
<u>Program</u>	<u>Instructional Size:</u>	<u>Instructional Size:</u>
	No Classroom Aide Required	Classroom Aide Required
...		
[Behavioral disabilities] Emotional regulation impairment	9	10 to 12
[Cognitive ²]		
Intellectual disability		
...		

¹ (No change.)

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

³ (No change.)

(f) Secondary special class programs are defined as programs [which] **that** 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] **pursuant** 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 **up to 16 students** 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 **board of education**, responsibility shall be as follows:

i. – ii. (No change.)

2. In vocational [shop] **education** 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 **students**. Class size shall not exceed 10 **students** without the addition of an aide unless prior written approval of the Department of Education through [its] **the county office of education (county office)** is granted [according] **pursuant** to N.J.A.C. 6A:14-4.9. Requests for approval of a class size [which] **that** exceeds 10 **students** without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:

(1) – (8) (No change.)

(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, **and the New Jersey** 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. – 3. (No change.)

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] **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 **board of education** intends to provide home instruction shall be provided to the Department of Education through [its] **the county office of education.**

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. (No change.)

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

5. – 6. (No change.)

6A:14-4.9 Exceptions

(a) Exceptions for the age range and group sizes specified [in] **at** N.J.A.C. 6A:14-4.4 [through], **4.5, 4.6, and** 4.7 shall be granted:

1. On an individual **student** basis;

2. Only with prior written approval of the Department of Education through [its] **the** county office **of education (county office)**; and

3. (No change.)

(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. – 2. (No change.)

(c) If the request is denied, the district **board of education** 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) (No change.)

(f) [As of July 6, 1998, no] **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 assessments [for their grade] **pursuant to N.J.A.C. 6A:8-4.1**. 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)] **alternate assessment for students with disabilities** 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] **pursuant** 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] **State-endorsed** diploma issued by the [school] district **board of education** responsible for his or her education.

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

1. – 3. (No change.)

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] **student** in meeting his or her postsecondary goals.

(c) If a student attends a school other than that of the school district of residence [which] **that** 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 **of the school district of residence** 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) – (e) (No change.)

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] **at 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] **district boards of education**, educational services commissions, jointure commissions, and county special services school districts.

2. (No change.)

3. If a vacancy occurs on a child study team[(s)] because of an absence of a [member or members] **member(s)** of the team[(s)] for an identified period of time, the district **board of education** may **contract**, for the duration of any such vacancy, [contract] with a clinic or agency **approved by the Department of Education**, an individual, or another district board of education for [those] **the** 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 **board of education**, responsibility for [the] **this chapter's** 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 a school(s) operated by [other] **another** district [boards] **board(s)** of education, the receiving district board of education shall be responsible for determining the eligibility of [those] **the sending district board of education's** 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] at (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health 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. (No change.)

ii. Child study team services to supplement existing [local] district **board of education** 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) (No change.)

(3) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a [bachelors] **bachelor's** 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. (No change.)

v. Speech-language services provided by a speech-language specialist when a district **board of education** 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 **board of education** 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] **pursuant** to N.J.A.C. 6A:15 and compensatory education [according] **pursuant** to N.J.S.A. 18A:46A-[2e]**2.e** 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] **the** county office **of education** according to the following:

1. – 2. (No change.)

3. [Districts] **District boards of education** 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) (No change.)

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] **included in the submission;**

2. (No change.)

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] **each individual** 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] **the** 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] **review** of each professional [according] **pursuant** 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 [check] **review**;

5. Assurance that the [facility or facilities] **facility(ies)** in which the services are being provided meet applicable building and other regulatory standards;

6. (No change.)

7. Assurance of a system for the collection, maintenance, confidentiality, and access of student records [which is according] **pursuant** to N.J.A.C. 6A:32; and

8. Assurance of the maintenance of a log, which includes, but is not limited to:

i. (No change.)

ii. The date, time, and location of the services provided; and

iii. (No change.)

(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] **pursuant** to N.J.A.C. 6A:3, **Controversies and Disputes**. [Such] **The** 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] **Department** of [Special] Education [Programs].

1. To amend the services provided, the agency or clinic shall submit the following:

i. (No change.)

ii. A list of professional staff who will provide [these] **the** services. The list shall verify each individual's certification and license, if one is required, and the function [he or she] **the individual** will fulfill; and

iii. Assurance that the criminal history record [check] **review** has been conducted [according] **pursuant** to N.J.S.A. 18A:6-7.1.

2. To amend the location of the [facilities] **facility(ies)**, the agency or clinic shall submit an assurance that the [facility or facilities] **facility(ies)** in which the services are to be provided meet applicable building and other regulatory standards as required [in] **at** (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] **Department** of [Special] Education [Programs] written notification within seven calendar days of the change.

(e) (No change.)

Subchapter 6. Requirements for Services in Nonpublic Schools

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

(a) The **district** board of education of the **school** district of attendance **shall provide**, 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 **school** 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 **school** 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] **After** timely and meaningful consultation with representatives of nonpublic schools, **the school district of attendance** 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 **school** district.

1. As part of the child find process, the **school** district [board] of [education] **attendance** 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. (No change.)

ii. If [a district is] unable to obtain [such] signed, written affirmation, [it] **the school district of attendance** shall forward documentation of the consultation process to the [office of special education programs] **Office**.

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) – (3) (No change.)

(4) Appeals of a **Department of Education** 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.] **§§ 1400 et seq.**, and its implementing regulations at 34 CFR [§§ 300.1 et seq] **Part 300**.

(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] **The** 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. – 2. (No change.)

(f) If a nonpublic school student with a disability will receive special education or related services from the **school** district of attendance, the **school district of attendance** shall:

1. Initiate and conduct meetings [according] **pursuant** 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] **district board of education**, the service plan for a student with a disability enrolled in a nonpublic school or early childhood program shall include the components described [in] **at** N.J.A.C. 6A:14-3.7(e)1 through 6, [(e)8 and (e)14 through] **8, 14, 15, and** 16. The transition requirements described [in] **at** N.J.A.C. 6A:14-3.7(e) shall be included only when the [responsible] district **board of education** 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 **school district of attendance** shall use other methods to ensure participation by the [private] **nonpublic** school, including individual or conference telephone calls.

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

(a) [According] **Pursuant** to N.J.S.A. 18A:46-14, [school age] **school-age** students with disabilities may be placed in accredited nonpublic schools [which] **that** 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] **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] **by the district board of education pursuant to** 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 **the district board of education's** 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] **that** 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]**14.a** through h cannot be provided to [this] **the** student;

3. The most appropriate placement for [this] **the** student is this nonpublic school;

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

5. The student shall receive a program that meets all the requirements of a thorough and efficient education as defined [in] **at** 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] **pursuant** to N.J.A.C. 6A:14-3.7(e)7 and 9.

i. All personnel providing either special education programs [according] **pursuant** to N.J.A.C. 6A:14-4.4 [through], **4.5, 4.6, or 4.7**[,] or related services [according] **pursuant** 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] **agency**;

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]7, [N.J.A.C.] 6A:32-[4.7]4.2, and this chapter;

6. The student shall receive a comparable program to [that] **the program** required to be provided by the [local] district board of education [according] **pursuant** to N.J.S.A. 18A:35-1, 2, 3, 5, 7, and 8, 18A:40A-1, **and** 18A:6-2 and 3[,], **and** N.J.A.C. 6A:8-3.1, and [N.J.A.C.] 6A:14-1 [through], **2, 3, and 4**. [These] **The** 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] **pursuant** to N.J.A.C. 6A:14-3.7(e)7 and 9;

7. The nonpublic school provides services [which] **that** are nonsectarian;

8. (No change.)

9. Written notice has been provided to the student's parent regarding this placement.

[which has] **The written notice** included a statement that:

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

ii. – iii. (No change.)

10. (No change.)

11. The nonpublic school has been provided copies of N.J.A.C. **1:6A**, 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. (No change.)

2. The district board of education and the parent agree to a settlement of the matter [which] **that** 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 **of education**.

(d) (No change.)

Subchapter 7. Receiving Schools

6A:14-7.1 General requirements

(a) (No change.)

(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] **pursuant** to this chapter.

1. Exceptions regarding age range and class size shall be requested by the district [of residence] board of education **of the school district of residence** 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 **of education**. 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) – (g) (No change.)

(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], **and** shall not be employed by, any approved private school for students with disabilities [which] **that** serves students with disabilities placed by that district board of education.

6A:14-7.2 Approval procedures to establish a new [receiving] **approved private school for students with disabilities**

(a) Prior to the establishment of [a receiving] **an approved private** 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] **that** shall include, but not be limited to:

i. – ii. (No change.)

iii. The curriculum and materials, including a description of how the New Jersey Student Learning Standards will be implemented;

iv. (No change.)

v. The organizational structure, including projected number of personnel by title, job function, and personnel requirements, including certification;

2. [A] **The applicant shall include 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] **the** students cannot be served in the [resident] **school district of residence**, supported by documentation from [local public school] district[s] **board(s) of education**. [Documentation of local school districts surveyed shall be included.] The Department of Education shall determine if the program to be provided by the [receiving] **approved private school for students with disabilities** is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the **survey of needs** [assessment].

i. (No change.)

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] **IDEA** (20 U.S.C. [§§1400] **§§ 1400** et seq.), and the Rehabilitation Act of 1973 (U.S. P.L. 93-112 Section 504, 29 U.S.C. [§794a] **§ 794a**);

ii. – v. (No change.)

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. (No change.)

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] **the** county [offices] **office** of education.

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

i. (No change.)

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

iii. A list of professional staff who will provide [these] **the** 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. (No change.)

3. [In accordance with] **Pursuant to** N.J.A.C. [6A:23-4.3(a)1] **6A:23A-18.4**, 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] **shall** 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 of **education** within seven calendar days of the change.

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

(a) Annually, each approved private school for students with disabilities shall submit fiscal information [according] **pursuant** to N.J.A.C. [6A:23] **6A:23A-18** to the Office of **School 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] **The** 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] **pursuant to** 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 **student's** IEP and the reevaluation of the student. At least annually, the district board of education shall monitor the implementation of the IEP.

1. (No change.)

(b) When a student with a disability is placed in a receiving school [as described in] **pursuant to** 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 of **education** within 10 calendar days of the placement. [Such] **The** 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 **only** the IEP team of the district board of education.

2. (No change.)

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] **the** 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] **public** agencies and [to] **in** 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] **pursuant** 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 **pursuant to N.J.A.C. 6A:14-7.10(b)2 or 6A:23A-18.15(f)2**, a district board of education having a student with a disability placed therein shall immediately begin seeking an alternative, appropriate placement for [that] **the** 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) (No change.)

(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 **executive** county superintendent [of schools] for approval;

2. If the **executive** 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 **district board of education as the** procedures [as] **for** 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] **provide** written notification and a description of the [reasons] **reason(s)** for [such] **the** 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] **pursuant** 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] **at** N.J.A.C. 6A:14-7.1(a) may operate [an] extended [academic] **school** year [program] **services**.

(i) [A] **In accordance with N.J.A.C. 6A:32-8.3(b)**, 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]. **A** special class program for preschoolers with disabilities operated [in accordance with] **pursuant to** N.J.A.C. 6A:14-4.1 may be considered a [full day] **full-day** program.

(j) (No change.)

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 **sending** district board of education. The district board of education shall convene an IEP meeting [according] **pursuant to** N.J.A.C. 6A:14-2.3(k). [Such] **The IEP** 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 **student's** 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] **pursuant** to N.J.A.C. 6A:14-2.3. [Such] **The** 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] **pursuant** to N.J.A.C. 6A:14-2.3(k). [Such] **The IEP** meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the **student's** 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] **pursuant** to N.J.A.C. 6A:14-2.3. [Such] **The** termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

(c) – (d) (No change.)

6A:14-7.8 Fiscal management

(a) (No change.)

(b) The district board of education shall establish a written contract for each student with a disability [it places] **placed** in a program approved under this subchapter. The contract shall include **a** written agreement concerning tuition charges, costs, terms, conditions, **and** 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] **pursuant** to N.J.A.C. 6A:23A-[16 through 22]**18.3**.

(c) [Daily] **Pursuant to N.J.A.C. 6A:27-5.1, daily** transportation costs shall be paid by the district board of education.

(d) (No change.)

(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]**18.10**.

6A:14-7.9 Records

(a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6A:32-7 pertaining to student records. In addition:

1. All student records maintained by a receiving school under this subchapter shall be returned to the [responsible] **sending** 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] **at** N.J.A.C. 6A:32-7.5 shall be directed to the chief school administrator or his or her designee of the **sending** 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] **pursuant to** N.J.A.C. 6A:23A-[16 through 22]**18.9** 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 **to the sending district board of education** 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] **pursuant** to N.J.A.C. 6A:14-9.1. [On site] **On-site** monitoring shall be conducted in accordance with the schedule established by the Department **of Education**.

(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] **a** corrective action plan.

i. An approved private school [which] **that** 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) (No change.)

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] **pursuant to** N.J.A.C. 6A:17-3 and [the requirements of] this chapter.
- (b) Each State agency operating approved **special education** programs shall develop a special education plan [according] **pursuant** to N.J.A.C. 6A:14-1.2. [which additionally] **The plan also** shall include:
1. -2. (No change.)
- (c) (No change.)
- (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] **pursuant** to N.J.A.C. 6A:32-7 to programs operated by a [New Jersey] State agency when a student is placed in a State facility. The parent **or adult student** shall receive notification of the release of [these] **the** records to the facility. Permitted records [according] **pursuant** 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] **pursuant** to N.J.A.C. 6A:32-7.
- (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 **board of education** 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 **facility** 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] **IEP**.

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 **of placement in the State facility**, the State facility shall review the student's educational status and determine if referral to the child study team is required.

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] **pursuant** 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] **district** board of education where the student is placed.

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

(c) (No change.)

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

(e) – (f) (No change.)

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 **be** limited to, review of:

i. - ii. (No change.)

iii. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent [such] **the disproportionate** 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;]

Recodify existing 2.-3. **as 1.-2.** (No change in text.)

[4.] **3.** Comparison of a sample of [individualized education programs] **IEPs** with the programs and services provided;

[5.] **4.** Development of [an improvement] **a required action** plan [by the program being monitored] to address areas of noncompliance identified during the [self-assessment] **monitoring;** and

[6.] **5.** (No change in text.)

(c) After the monitoring process is completed, a report shall be written **by the Department of Education** 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)] (d) The [improvement] **required action** plan shall include, but not be limited to, the following:

1. – 2. (No change.)

[(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)] (e) 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, **written** request to the [State] Director of the Office [of Special Education Programs] and to the [educational] **public** agency against which the complaint is directed. The complaint shall include:

1. – 2. (No change.)

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 **by the Director of the Office**.

(c) The Office [of Special Education Programs] shall, if deemed necessary, complete an investigation within 60 calendar days after receipt of the [written] signed, **written** complaint and issue a report setting forth a final decision [with respect to] **regarding** the complaint, unless the time period is extended [according] **pursuant** to [(c)6] **(c)5** 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] **written notice** 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. – iv. (No change.)

v. An on-site investigation, if determined necessary; and

vi. (No change.)

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] **issued** within 60 calendar days after receipt of the written signed complaint unless the 60-day time period is extended [in accordance with (c)6] **pursuant to (c)5** 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. (No change.)

(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] **the Office** 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] **placed in abeyance** pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed [in accordance with] **pursuant to** (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] **2012**, c. [155] **17 and c. 45**.

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 board of education shall provide a free, appropriate public education for [that] **the** student by continuing

the program in the early intervention program for the balance of [that] **the** school year, the following requirements shall apply:

1. The district board of education shall be responsible [to ensure that] **for ensuring** the requirements of N.J.A.C. 6A:14-1.1(d) [shall be] **are** met;

2. – 3. (No change.)

4. Applications for exceptions [according] **pursuant** to N.J.A.C. 6A:14-4.9 shall be made **by the district board of education** 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 **school** year [program] **services**, the district **board of education** may contract with the early intervention program for the provision of that program.