



CHILDREN'S RIGHTS IN NEW JERSEY'S STATE-FUNDED PRESCHOOL PROGRAM

Jason A. Pedraza, Esq.
Staff Attorney – Skadden Fellow

- NJ's High-quality Preschool Program
- Enrolling in Preschool
- English Language Learners
- Behavior and Discipline
- Special Education
- Legal Process



NJ's High-quality Preschool Program



3

- In 1998, ELC secured a ruling from the NJ Supreme Court mandating high-quality preschool in 31 poorer urban districts¹
- Today, NJ provides **free, full-day preschool for three- and four-year-olds in more than 140 communities**
- Depending on your community, free preschool may be provided by district schools, contracted private providers, or Head Start agencies



Preschool Program Details

- **Full-day** preschool consists of a six-hour program that follows the district's regular academic calendar year (180 days)²
- **Before and after school care** (wraparound services) may be available depending on the district and income eligibility³
- Families may be able to **choose** a specific preschool program, depending on availability and type of provider
- **Transportation is provided** for preschool students who live **more than two miles** from their program⁴
- Eligibility for free or reduced-price **meals** based on family income⁵
- Children are **not required to be potty-trained**⁶
- One certified teacher and one appropriately qualified teacher assistant for every **15 children**⁷

Preschool Changes Lives

- Children who attend high-quality preschool:⁸
 - Perform better academically
 - Are less likely to stay back a grade
 - Are less likely to need special education services
 - Are four times more likely to graduate from high school and college
 - As adults, they are less likely to live in poverty and be incarcerated
- Children who attend **two years** of preschool show even greater gains in academic achievement⁹

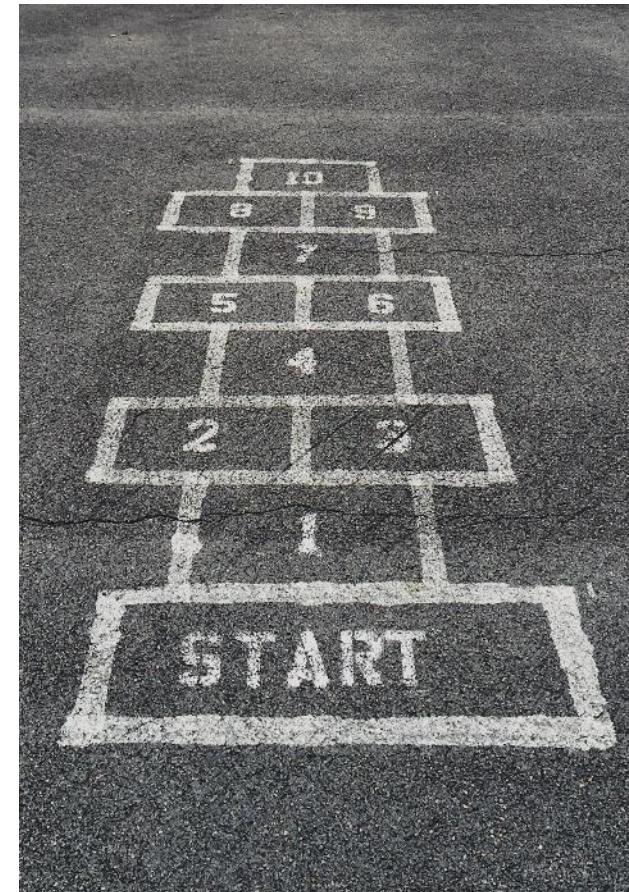


- “We made a decision several years ago to enroll our kids in pre-k because of the **opportunities that preschool provides** for learning, growth, social skill development—and future opportunity. We know the benefits of improved reading scores, and see the daily growth in self-confidence, language, skill development and interaction.”¹⁰
- “As a parent and educator, I want my daughter to have the **best possible start** and positive experience in her early childhood education...They structured the pre-k program to foster curiosity and an interest in learning.”¹¹

- Is free, high-quality preschool available in my community?
 - <https://prekourway.org/assets/UPDATED-LIST-OF-DISTRICTS-at-Sept-5-2019.pdf>
 - **35 districts** have free, **universal** preschool for **all** three- and four-year-olds living in their communities
 - The remaining **expansion districts** have free preschool for **all or some** three- and four-year-olds
 - Contact these districts directly for specific availability

Enrolling in Preschool – Procedures

- Contact districts directly for enrollment information or check their websites
- Districts determine preschool **age eligibility** for three- and four-year olds (birthday cut-offs)¹²
- NJ Department of Education (DOE) regulations govern **residency** requirements for admitting children to free preschool¹³



- To be considered an eligible resident of a school district, the child must be either:
 - (a) **domiciled** in the district (child's domicile based on parent or legal guardian's domicile)¹⁴, or
 - (b) living in the home of someone domiciled in the district, other than the parent or legal guardian, due to family or economic hardship (**affidavit student**)¹⁵
 - Other rules and rights apply when a child is **homeless**¹⁶

- A district board of education is authorized to request documentation related to domicile, residency, affidavit student status, and income¹⁷
- **Some acceptable forms of documentation include:** property tax bills, mortgages, signed letters from landlords, voter registrations, licenses, permits, utility bills, court orders, receipts, bills, medical reports, employment documents, affidavits, and documents pertaining to military service¹⁸
- A district must consider the **totality of the information** submitted and **cannot deny** a student enrollment due to an inability or failure to provide a particular document¹⁹

- **All children, regardless of immigration status, are entitled to a free public education, including NJ state-funded preschool programs²⁰**
 - A school board may **NEVER** request or require proof of immigration status or even a Social Security number²¹
- Immigration and Customs Enforcement (**ICE**) and Customs and Border Patrol (**CBP**) are **prohibited** from conducting enforcement actions at schools, including preschools, except in very limited circumstances²²

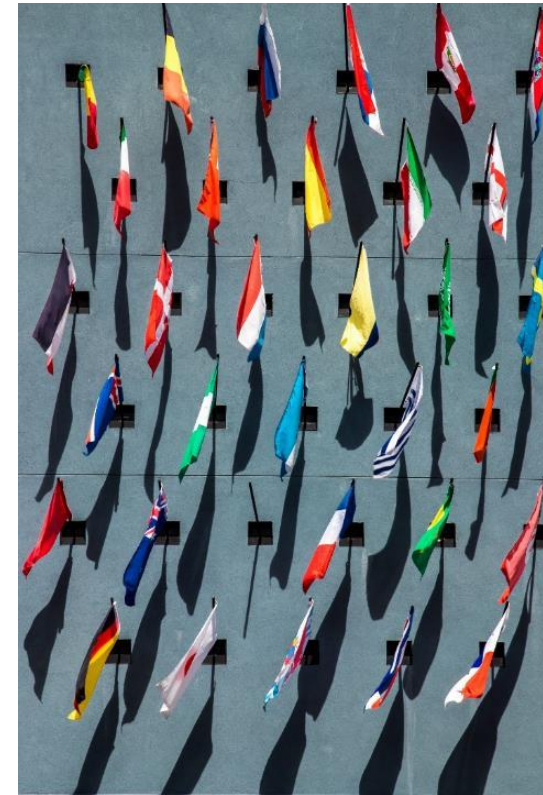


- Even when an applicant provides incomplete, unclear, or questionable information, **enrollment must take place immediately in virtually all cases**²³
 - If defects in the application are not corrected or an appeal is not filed within **21 days**, the student will be removed from the district²⁴
- If denied, the applicant can appeal within **21 days** and during the appeal process the student is permitted to attend school²⁵
 - If the appeal is lost or abandoned, the district may charge **tuition reimbursement**²⁶
 - **Currently enrolled students** cannot be removed without a hearing before the district board of education²⁷

Understanding Public School Residency Requirements: A Guide for Advocates

[https://edlawcenter.org/assets/files/pdfs/publications/
Residency_Publication_Update_Mar.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Residency_Publication_Update_Mar.pdf)

- Any child who speaks a language **other than English at home** is considered an English Language Learner (**ELL**), even if the child understands or speaks some English²⁸
- To identify ELLs, the child's primary caregiver completes a **home language survey**²⁹
- The survey asks about the language the child uses at home with caregivers, siblings, and friends
- **Schools must communicate information to limited English proficient (LEP) parents in a language they can understand** about any program, service, or activity that is communicated to parents who are proficient in English³⁰



- By law, districts must take **affirmative steps** to address language barriers to provide ELLs with an **equal opportunity to meaningfully participate in preschool** programs³¹
- Preschool programs should provide developmentally appropriate instruction that **supports children’s home language (to the maximum extent possible) and English**³²
- Preschool staff and the child’s primary caregiver should discuss the home language environment to inform appropriate instruction
- **English proficiency tests should only be administered at the end of preschool or for kindergarten entrance** when determining optimal kindergarten placements³³

- **Preschool children may NEVER be suspended or expelled**³⁴
 - Only one exception: “Zero Tolerance for Guns Act”³⁵
- “Partial suspensions” (removal from the classroom and daily program) or being sent home early due to challenging behavior is also **unlawful**³⁶
- Students of color and students with disabilities continue to be **disproportionately disciplined**³⁷

- All school districts are required to:
 - Implement an early detection and prevention program that **identifies** students in preschool who are experiencing behavioral or disciplinary problems and
 - Provide **behavioral supports** for these students, including remediation of problem behaviors, positive reinforcements, supportive interventions, and referral services³⁸



- A **Preschool Intervention and Referral Team (PIRT)** or **Intervention and Referral Services Team (I&RS)** supports preschool staff with strategies to modify children's behaviors to **promote inclusion and reduce referrals for special education**³⁹
 - Team members include psychologists, learning disabilities teacher, consultants, school social workers, and speech and language specialists
- Where problematic behaviors cannot be adequately addressed through behavioral support plans, children will be referred directly to the district's **Child Study Team** for further evaluation and possibly special education and related services⁴⁰

Student Discipline Rights and Procedures: A Guide for Advocates

https://edlawcenter.org/assets/files/pdfs/publications/StudentDisciplineRights_Guide_2012.pdf

School Discipline in New Jersey:

A Toolkit for Students, Families, and Advocates

https://edlawcenter.org/assets/files/pdfs/publications/Student_discipline_manual.pdf

Special Education

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- Under the **Individuals with Disabilities Education Act (IDEA)**, a child with a disability is entitled to a **free appropriate public education (FAPE)**⁴¹ in the **least restrictive environment (LRE)**⁴²
 - **Inclusion:** To the maximum extent appropriate, preschool children with disabilities must be educated alongside peers who do not have disabilities⁴³
- If possible, the referral and evaluation process should begin at least **120 days before the child's third birthday** to ensure an appropriate program is in place by the age of three⁴⁴
- **NOTE:** children between the ages of three and five with a qualifying disability under the IDEA are entitled to a free and appropriate preschool program in the LRE in **every school district**, not just in the communities with NJ state-funded preschool⁴⁵



- The **referral** is a request that a child be evaluated for special education and related services⁴⁶
 - Parent, teacher, or an outside agency makes a **written request** for initial evaluation to the school district⁴⁷
 - In addition to parents, Child Study Team, and teacher, a **speech-language specialist** participates in the meeting to determine whether to evaluate a preschool-age child, which is held within 20 calendar days⁴⁸
 - **Parental consent** or an administrative order is required for an initial evaluation⁴⁹



- The **evaluation** determines a) if the child has a disability and b) the nature and extent of the special education and related services that the child needs⁵⁰
 - Free, multidisciplinary test in all areas of suspected disability⁵¹
 - Conducted in language most likely to yield accurate results⁵²
 - Written report with findings⁵³
- If the **parent disagrees** with the evaluation, they have the right to request an **independent educational evaluation (IEE) paid by the district**⁵⁴
- By June 30 of a student's last year of eligibility for a program for preschoolers with disabilities, a **reevaluation** shall be conducted⁵⁵

Special Education – Preschool Child with a Disability

- A child between the ages of three and five who **either**:
 - ▣ Is experiencing **developmental delay**, meaning a 33% delay in one developmental area or a 25% delay in two or more developmental areas listed below
 - Physical, including gross motor, fine motor and sensory (vision and hearing)
 - Intellectual
 - Communication
 - Social and emotional
 - Adaptive
 - ▣ **Or**, has an **identified disabling condition**, including vision or hearing, that adversely affects learning or development and who requires special education and related services⁵⁶

- Every child eligible for special education and related services is entitled to an **Individualized Education Program (IEP)**⁵⁷
 - **Written plan** outlining the special education programs and related services and supplementary aids and services⁵⁸
 - Developed by a team that includes the child's **parents as equal members** along with the Child Study Team, teachers, and other professionals⁵⁹
 - Addresses academic, behavioral, social-emotional, and life skills⁶⁰
- The **first IEP requires written parental consent** to be implemented; however, **parental consent is not required to implement any subsequent changes** to the IEP, so long as the parent is notified in writing and given at least 15 calendar days to consider the proposed changes⁶¹



- The IEP is developed at a meeting with the child's parents, and the Child Study Team **may not** decide what will be included in the IEP prior to the meeting (but suggestions/draft okay)⁶²
- The IEP meeting is scheduled **within 30 calendar days** of the determination that a child is eligible for special education and related services, and the **IEP team meets at least once a year**⁶³
- The IEP meeting must be conducted in the **parent's language**, unless it is clearly not possible, and interpreters must be provided by the school district at **no cost to the parent**⁶⁴
- If the parent requests in writing that the child's IEP or placement be changed, the IEP team must respond, and if necessary schedule a meeting, within **20 calendar days**⁶⁵

- Statement of the child’s present levels of academic achievement and functional performance: how the disability affects the preschool child’s **participation in age-appropriate activities**⁶⁶
- **Measurable annual goals** with benchmarks and short-term objectives⁶⁷
- **Specific services** to be provided, including an extended school year if warranted⁶⁸
- How the parents will be **regularly informed** of the child’s progress (at least as often as the parents of non-disabled children)⁶⁹



Examples of Related Services⁷⁰

- Counseling
- Occupational therapy
- Physical therapy
- School nurse services
- Recreation
- Social work services
- Speech-language services
- Medical services (for diagnostic and evaluation purposes only)⁷¹

- The IEP is developed **before** the placement is decided, because the chosen placement must be able to implement the program and services in the IEP⁷²
- The placement must be: **a) determined annually, b) based on the IEP, and c) as close as possible to the child's home**⁷³
- The school district must give the parent the **opportunity to visit and observe** the school placement prior to implementation⁷⁴



- If the **parent disagrees** with the placement and cannot resolve the issue with the district, they can request **mediation or a due process hearing** (parent will need **expert support** for their position)⁷⁵
 - If the disagreement is over any **subsequent change in the placement**, the child has the **right to “stay put”** in their current education program until the disagreement is resolved⁷⁶
 - For disagreements over the **initial placement**, resolution depends on the specific facts

- Remember preschool children, including those with disabilities, **may NEVER be suspended or expelled**⁷⁷
- Children may not be **improperly disciplined** for conduct related to their disabilities⁷⁸
- Challenging behaviors must be addressed through **positive behavioral interventions**⁷⁹
- If necessary, the IEP team creates a **Behavioral Intervention Plan** based on information gathered during a **Functional Behavioral Assessment**⁸⁰
- A district may propose a program or placement change, but if the **parent disagrees**, they can contest the change through **mediation or a due process hearing** (parent will need **expert support** for their position)⁸¹



The Right to Special Education in New Jersey: A Guide for Advocates

English

https://edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf

Spanish

<https://edlawcenter.org/assets/files/pdfs/publications/The%20Right%20to%20Special%20Education%20-%20Spanish%20Translation%20TL.pdf>

Due Process Hearings (Special Education)

- File petition with NJ DOE **Office of Special Education Policy and Dispute Resolution**
- Opportunity for resolution meeting or mediation
- If not resolved to parents' satisfaction within 30 days, transmitted to Office of Administrative Law (OAL)
- Administrative Law Judge (ALJ) holds a hearing and renders **final decision** (required within 45 days but often delayed), which is appealable to NJ Superior Court or federal district court

General Education Disputes (Residency and Discipline)

- File petition with NJ DOE **Office of Controversies and Disputes**
- Virtually always transmitted to OAL, but can be retained by NJ DOE Commissioner
- ALJ holds a hearing and renders **initial decision**, and parties have 13 days to file exceptions
- Commissioner reviews and makes **final decision**, which is appealable to NJ Superior Court, Appellate Division

Legal assistance:

ELC intake: **973-624-1815, ex. 30**

- Leave your name and a call-back number
- Intake application over the phone
- Eligibility based on income, school district, and case type



Jason A. Pedraza, Esq. – Jpedraza@edlawcenter.org

1. Abbott v. Burke, 153 N.J. 480 (1998)
2. N.J.A.C. 6A:13A-1.2
3. N.J.A.C. 6A:10A-1.2
4. N.J.A.C. 6A:27-1.4
5. N.J.A.C. 6A:13A-4.5
6. <https://www.state.nj.us/education/ece/psguide/DECEAdvisory-Toileting10-2019.pdf>
7. N.J.A.C. 6A:13A-4.3(a)
8. https://acnj.org/downloads/2013_05_01_PrekChangesLivesInfographic.png
9. <http://nieer.org/wp-content/uploads/2016/08/apples20fact20sheet.pdf> (for more information visit <http://nieer.org/>)
10. <https://prekourway.org/our-supporters/>
11. *Id.*
12. N.J.A.C. 6A:13A-2.1(d)
13. N.J.A.C. 6A:22
14. N.J.S.A. 18A:38-1(a)
15. N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-3.2(a)
16. https://edlawcenter.org/assets/files/pdfs/student%20residency/Education_Rights_of_Homeless_Stu.pdf
17. N.J.A.C. 6A:22-3.4(a)
18. *Id.*
19. N.J.A.C. 6A:22-3.4(b)
20. Plyler v. Doe, 457 U.S. 202 (1982)
21. N.J.A.C. 6A:22-3.4(d)(2) and (4)
22. <https://www.ice.gov/ero/enforcement/sensitive-loc> (Pursuant to ICE policy, enforcement actions are not to occur at or be focused on sensitive locations such as schools); See also <https://www.clasp.org/publications/report/brief/guide-creating-safe-space-policies-early-childhood-programs>
23. N.J.A.C. 6A:22-4.1(c)
24. N.J.A.C. 6A:22-4.1(c)(2)(i)
25. N.J.A.C. 6A:22-4.2(b)(4)
26. N.J.A.C. 6A:22-4.2(b)(6)
27. N.J.A.C. 6A:22-4.3(e)
28. N.J.A.C. 6A:15-1.3
29. *Id.*
30. <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>
31. 34 C.F.R. § 100.1-.2; 20 U.S.C. § 1703(f)
32. <https://www.nj.gov/education/ece/guide/impguidelines.pdf>
33. *Id.*

34. N.J.S.A. 18A:37-2(c); N.J.A.C. 6A:14-2.8(a)(1)
35. N.J.A.C. 6A:13A-4.4(g)
36. <https://www.nj.gov/education/ece/psguide/suspension.htm>
37. <https://www.instituteforchildsuccess.org/themencode-pdf-viewer/?file=https://www.instituteforchildsuccess.org/wp-content/uploads/2018/12/ICS-2018-PreschoolSuspensionBrief-WEB.pdf>
38. N.J.S.A. 18A:37-2(b)
39. N.J.A.C. 6A:13A-4.4; N.J.A.C. 6A:16-8
40. N.J.A.C. 6A:13A-4.4(d)(5)
41. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)
42. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a)(2); N.J.A.C. 6A:14-1.1(b)(5)
43. N.J.A.C. 6A:14-1.2(b)(6)
44. 20 U.S.C. § 1412(a)(9); 34 C.F.R. § 300.124(b); N.J.A.C. 6A:14-3.3(e)(2)
45. 20 U.S.C. §§ 1401(9)(C) and 1412(a)(1)(A); 34 C.F.R. §§ 300.17(c) and 300.101(a); N.J.A.C. 6A:14-1.1(b) and (d)
46. N.J.A.C. 6A:14-1.3
47. N.J.A.C. 6A:14-3.3(a)(3)(ii)
48. N.J.A.C. 6A:14-3.3(e)(3)
49. 20 U.S.C. § 1414(a)(1)(D)(i)(I); 34 C.F.R. § 300.300(a)(1)(i); N.J.A.C. 6A:14-3.4(b)
50. 20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.305(a)(2); N.J.A.C. 6A:14-3.4(a)(2)
51. 20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. 300.301(a); N.J.A.C. 6A:14-3.4(f)
52. 20 U.S.C. § 1414(b)(3)(A)(ii); N.J.A.C. 6A:14-3.4(f)(1)
53. N.J.A.C. 6A:14-3.4(h)
54. 34 C.F.R. § 300.502; N.J.A.C. 6A:14-2.5(c)
55. N.J.A.C. 6A:14-3.7(i)(1)
56. N.J.A.C. 6A:14-3.5(c)(10)
57. 20 U.S.C. §§ 1401(9)(D), 1412(a)(1) and 1414(d)(2); 34 C.F.R. §§ 300.17(d) and 300.323(a); N.J.A.C. 6A:14-3.7(a)(1)
58. 20 U.S.C. §§ 1401(14) and 1414(d)(1)(A)(i); 34 C.F.R. §§ 300.22 and 300.320(a); N.J.A.C. 6A:14-1.3
59. 20 U.S.C. §§ 1414(d)(1)(B) and 1414(d)(3)(A); 34 C.F.R. §§ 300.321(a) and 300.324(a)(ii); N.J.A.C. 6A:14-2.3(k)(2) and 3.7(b)
60. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(IV); 34 C.F.R. § 300.320(a)(1)-(4); N.J.A.C. 6A:14-3.7(e)(1)-(4)
61. 20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b)(1); N.J.A.C. 6A:2.3(a)(2); N.J.A.C. 6A:14-2.3(h)(2)

- 62. 20 U.S.C. §§ 1414(d)(3)(A) and (4)(A); 34 C.F.R. § 300.322 and 324; N.J.A.C. 6A:14-2.3(k)(2)(i) and 3.7(b); 20 U.S.C. § 1401(14); 34 C.F.R. § 300.22
- 63. 34 C.F.R. § 300.323(c); N.J.A.C. 6A:14-3.7(a) and (i)
- 64. 34 C.F.R. § 300.322(e); N.J.A.C. 6A:14-2.4(a)
- 65. N.J.A.C. 6A:14-2.3(h)(5)(i)
- 66. 20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); N.J.A.C. 6A:14-3.7(e)(1)(ii)
- 67. 20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(2); N.J.A.C. 6A:14-3.7(e)(2) and (3)
- 68. 20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); N.J.A.C. 6A:14-3.7(e)(4)
- 69. 20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3); N.J.A.C. 6A:14-3.7(e)(16)
- 70. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a); N.J.A.C. 6A:14-3.9
- 71. 34 C.F.R. § 300.34(c)(5); N.J.A.C. 6A:14-3.9(a)(9)
- 72. 34 C.F.R. § 300.116(b)(2); N.J.A.C. 6A:14-1.3 (see definition of IEP, which states that it “shall establish the rationale for the student’s educational placement.”)
- 73. 34 C.F.R. §300.116(b); N.J.A.C. 6A:14-1.3, 3.7(i), 4.1(a) and 4.2(a)(6)
- 74. N.J.A.C. 6A:14-4.1(k) and 6A:14-7.5(b)(2)
- 75. 20 U.S.C. § 1415; 34 C.F.R. §§ 300.500 - 520; N.J.A.C. 6A:14-2.6 and 2.7
- 76. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518; N.J.A.C. 6A:14-2.6(d)10 and 2.7(u)
- 77. N.J.S.A. 18A:37-2(c); N.J.A.C. 6A:14-2.8(a)(1)
- 78. N.J.A.C. 6A:16-7.1(a)(6)
- 79. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); N.J.A.C. 6A:14-3.7(c)(5)
- 80. Id.
- 81. 20 U.S.C. § 1415; 34 C.F.R. §§ 300.500 - 520; N.J.A.C. 6A:14-2.6 and 2.7