

The Right to Special Education in New Jersey

A G U I D E F O R A D V O C A T E S

SECOND EDITION



Education Law Center



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About the Education Law Center

The Education Law Center (ELC)¹ was established in 1973 to advocate on behalf of New Jersey's public school children for access to an appropriate education. ELC works to improve educational opportunities for low-income children and children with disabilities through public education, policy initiatives, research, communications and, when necessary, legal action. ELC's advocacy, which includes such landmark rulings as *Abbott v. Burke*, has significantly advanced the provision of fair school funding, high quality early education, safe and adequate school facilities, and school reform, especially to schools serving high concentrations of at-risk students and students with disabilities and other special needs. These successes have, in turn, resulted in strong academic gains and progress in closing student achievement gaps in New Jersey.

ELC also provides free legal representation to school children who are denied access to an adequate or appropriate public education. The types of cases accepted include: special education, school discipline, school district admissions and other violations of individual student rights.

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This manual is designed to help advocates, including parents,² obtain special education for children with disabilities³ residing in New Jersey. The manual explains the requirements of the federal statute governing special education—the Individuals with Disabilities Education Act (IDEA)⁴—and the federal regulations implementing IDEA,⁵ as well as the state regulations implementing IDEA.⁶ A summary of the federal and state laws can be found in Appendix A of this manual.

In addition, the manual gives practical information about the special education system, and suggests ways to advocate for an appropriate education for children with disabilities. The intent of this manual is to provide information and guidance to advocates so that all children with disabilities in the state can achieve high standards and receive an education that prepares them for full participation in society. A list of “general tips” for parents can be found in Appendix K of this manual.

A list of advocacy and information resources helpful to parents can be found in Appendix L of this manual.

This publication is provided as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by an attorney.

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CHILDREN COVERED BY THE LAW

In order to be eligible for the IDEA rights, protections and services discussed in this manual, **a child must be between the ages of three and 21⁷ and meet the definition of a “child with a disability.”⁸** The definition of a “child with a disability” includes a child with physical, emotional, learning and cognitive disabilities who, because of the condition, needs “special education and related services.”⁹ The specific categories for a “child with a disability” in New Jersey are listed in Appendix B of this manual.

It is important to realize that a child who does not meet the IDEA definition of a “child with a disability” may still be entitled to assistance if he or she is having difficulty in school. Unless the nature of the child’s educational problems indicates that he or she may have a disability (in which case a direct referral for special education services **may** be made), or the parent makes a written request for a special education evaluation (in which case a direct referral for special education services **must** be made), the school district is required to first provide interventions in the general education program to children experiencing educational problems.¹⁰ Each school district must have a coordinated system for planning and delivering intervention and referral services designed to a) assist children who are experiencing learning, behavior or health difficulties, and b) assist staff who have difficulties in addressing the needs of those children.¹¹ Additionally, under Section 504 of the Rehabilitation Act¹² (Section 504), a child may be eligible for general education or special education and related services that are designed to meet the individual needs of the child if the child has a physical or mental impairment which substantially limits a major life activity.¹³ Section 504 is discussed in more detail in this manual at p. 55. Further, a child whose native language is not English, and who has trouble learning in English, may be eligible for a bilingual education or English language instruction.¹⁴ Of course, a child who needs a bilingual program may also meet the definition of a “child with a disability,” and may be entitled to both types of programs.

Under IDEA, every child who meets the law’s definition of a “child with a disability” is entitled to a “free appropriate public education,”¹⁵ or FAPE, in the “least restrictive environment.”¹⁶ The term FAPE is defined as “special education” and “related services” that:

- are provided at public expense, without charge to the parent, under public supervision and direction;
- meet the state’s educational standards (as contained in state regulations and statutes for special education, as well as general education, when applicable); and
- comply with the child’s “individualized education program” (IEP), discussed in this manual at p. 19.¹⁷

The Right to “Special Education”

A FAPE includes an educational program that is individually designed to meet the child’s unique educational needs, and that prepares the child for further education, employment and independent living.¹⁸ Such a program is called “special education.” Special education encompasses a wide range of program settings, instructional strategies and educational interventions.¹⁹ While IDEA does not entitle children to the best educational program available, it does require school districts to provide children with planned educational programs which account for the children’s disabilities, offer the opportunity for significant learning and allow the children to make meaningful educational progress.²⁰ No child may be excluded from public school on the grounds that his or her disability is too severe to benefit from education.²¹ IDEA recognizes that every child is able to learn, and requires educational opportunities to be provided for all.²²

The Right to “Related Services”

In addition to a special education program, a FAPE includes “related services,” where warranted.²³ Related services are developmental, corrective and other supportive services needed to help a child benefit from the education program.²⁴ Related services can include transportation to and from school, or around the school building; physical therapy (PT), occupational therapy (OT) or speech/language therapy; counseling or psychological services; parent counseling and training; and school health services.²⁵ These services are examples of “related services;” there may be other types of related services which a child needs in order to benefit from, or have access to, an education program. For example, the United States Supreme Court has deemed continuous, one-on-one nursing services to be related services.²⁶ The services of a medical doctor, on the other hand, are not considered related services, except when necessary to determine the type of special education and related services the child needs.²⁷ Families may not be charged for related services for which their child is determined eligible, whether the school district provides them directly or through a private source.²⁸

The Right to the “Least Restrictive Environment” and “Inclusion”

IDEA requires that children be educated in the least restrictive environment (LRE) possible, given their individual needs.²⁹ This means that they must have the opportunity to interact with, and be educated with, children who do not have disabilities, to the maximum extent appropriate. **There is a strong preference for educating children with disabilities in the general education classroom, with appropriate aids and services.**

A school district must have a full continuum or wide range of alternative placements

“IDEA requires a school district to provide a child with a planned educational program that accounts for his or her disability, offers the opportunity for significant learning, and allows the child to make meaningful educational progress.”

“To the maximum extent appropriate, children with disabilities must be educated in the general curriculum.”

available for children with disabilities,³⁰ starting with the general education classroom with supplementary aids and services. More restrictive placements include “pull-out” or “resource” programs for some academic subjects; “self-contained” classes within the public school; schools for children with disabilities; and, in some very limited situations where children are too ill or impaired to attend school, home or bedside instruction. In all situations, placement must be provided in an appropriate educational setting as close to home as possible.³¹ The right to an education in the least restrictive environment is discussed in more detail in this manual at p. 27.

The Right to Equal Treatment with Children without Disabilities

Children with disabilities have a right to attend school for as long a school day and as long a school year as children without disabilities.³² Children with disabilities must be afforded an equal opportunity to participate in non-academic and extracurricular activities as is afforded to children who do not have disabilities (see next paragraph).³³ Classrooms and other facilities for children with disabilities must be in as good a condition as those that serve the rest of the children in a school district.³⁴ Children with disabilities may not be kept out of school programs because of physical barriers in the school building, such as stairs or narrow doorways.³⁵

The Right to Participate in Nonacademic and Extracurricular Activities

Children with disabilities are entitled to an equal opportunity to children without disabilities to participate in nonacademic school courses or special programs, such as gym, art, music, home economics, vocational education, athletics, social and recreational programs, and extracurricular activities which are available within the school district.³⁶ If necessary, the course or program must be adapted to meet the particular needs of children with disabilities.³⁷

The Right to an Education in Accordance with the State’s Core Curriculum Content Standards and the Right to Participate in Statewide Assessments

To the maximum extent appropriate, children with disabilities must be educated in the State’s general curriculum.³⁸ This means that, as appropriate, children with disabilities must be provided with the same knowledge and learning as their non-disabled peers. All children in New Jersey are supposed to be taught to master the Core Curriculum Content Standards (CCCS).³⁹ The CCCS are the State’s educational standards for what public school children must learn in the various subject areas.⁴⁰ Children with disabilities must be taught the CCCS, unless the nature of their disability is so severe that such an education would not be appropriate.⁴¹ For children with significant cognitive deficiencies, the New Jersey Department of Education (NJDOE) has developed the Core Curriculum Content Standards for Students with Severe Disabilities (CCCSSD). The CCCSSD are based on the CCCS, with modified cumulative progress indicators for children who are learning functional living skills. The CCCS and the CCCSSD are available from NJDOE and every school district, and may be accessed on NJDOE’s web site at www.state.nj.us/education/specialed/cccssd_faq.htm.

Additionally, children with disabilities must participate in district and statewide assessments (tests), based on the CCCS, with appropriate accommodations and modifications, unless the nature of the child’s disability is so severe that the child is not receiving instruction in any of the areas and skills measured by the assessments.⁴² Assessments can be very important tools for measuring whether a child with a disability is learning and progressing in his or her educational program, and in determining whether the educational program is appropriate. The “IEP team,” discussed in this manual at p. 8, is responsible for determining the child’s need for accommodations and modifications during

the administration of assessments, and for determining whether a particular child requires an alternate assessment.⁴³ NJDOE has developed a list of accommodations and modifications for consideration by IEP teams, which is available on NJDOE's website under "Assessment and Evaluation" at www.nj.gov/education/specialed/accom900.htm. NJDOE has instructed that its Office of Assessment be contacted when a child requires an accommodation or modification that is not on the list.

Generally, a high school student with a disability who participates in the general curriculum must pass the High School Proficiency Assessment (HSPA) in order to receive a diploma, unless his or her IEP specifies exceptions to graduation requirements.⁴⁴ If a child with a disability fails one or more sections of the HSPA and requires an alternate format to demonstrate the skills and knowledge measured by the HSPA, the school district must allow the child to participate instead in an alternate assessment known as the Special Review Assessment (SRA), which allows students the opportunity to demonstrate mastery of HSPA skills in a more familiar context.⁴⁵ Other alternate assessments are required to be provided to any child whose disability is so severe that he or she is not receiving instruction in the knowledge and skills measured by the HSPA, SRA, or other district or statewide assessments.⁴⁶ NJDOE has developed an Alternate Proficiency Assessment (APA), mandated by the No Child Left Behind Act (NCLB),⁴⁷ to be used by anyone whose IEP requires alternative assessment, however, the APA is currently under review by NJDOE because of concerns raised by the United States Department of Education. It should be noted that NCLB only allows up to two percent of children in any district to take an alternative assessment.⁴⁸

The Right to a High School Diploma

All children with disabilities in New Jersey have the right to earn a high school diploma.⁴⁹ They can earn a diploma by completing the same courses and earning the same number of credits as non-special education children, and by passing the HSPA. Alternatively, when their IEP specifies exceptions to certain graduation requirements, children with disabilities who are unable to satisfy all general education graduation requirements may earn a high school diploma by completing the special education program and meeting the graduation requirements set forth in their IEP.⁵⁰

Children with disabilities have the right to stay in school through the school year in which they turn 21, or until they graduate.⁵¹ If a child accepts a high school diploma prior to age 21, the child is no longer entitled to a free public education.⁵² However, if it can be shown that the school district failed to provide an appropriate educational program prior to issuing the diploma, the child may be entitled to additional "compensatory education," discussed in this manual at p. 37, beyond the time the diploma was issued.

If a child is 18 or older, and the school district believes that the child has met the graduation requirements set forth in his or her IEP and is eligible to graduate, the school district must give the parent and the adult student written notice.⁵³ If the parent and child do not agree with this determination, they may request mediation or due process procedures,⁵⁴ discussed in this manual at pp. 32, 38. The child must be allowed to continue in school until the procedures are completed, or the child is beyond the age of 21.⁵⁵

The school district where the child lives is responsible for making sure the child receives a FAPE.⁵⁶ This includes children who have been placed by the New Jersey Division of Youth and Family Services (DYFS) in foster and group homes within a school district.⁵⁷ If a child is in a residential state facility, or has been placed by a state agency (other than DYFS) in a group home, private residential school or out-of-state facility, the current school district of the parent or legal guardian with whom the child lived immediately prior to the placement by the state agency is responsible for the cost of the child's education.⁵⁸ The child, however, must be permitted to attend school in the school district where he or she resides.⁵⁹ If it cannot be determined which school district has financial responsibility, or if the child's parent or guardian lives outside New Jersey, the state must assume financial responsibility for the child's education.⁶⁰

Under IDEA, NJDOE is ultimately responsible for assuring an appropriate education for all children with disabilities residing within the state.⁶¹ This means that NJDOE must have regulations and standards requiring school districts to identify, evaluate and provide appropriate education programs to children with disabilities.⁶² NJDOE must also monitor and enforce school district compliance with its standards, and, if necessary, provide direct services to children with disabilities.⁶³

CHILD STUDY TEAMS, CASE MANAGERS AND IEP TEAMS

The child study team is the school district's professional staff responsible for providing services to children with disabilities.⁶⁴ The child study team consists of a school psychologist, social worker, and learning disabilities teacher/consultant.⁶⁵ For children with a speech-language disability, the school district's speech-language specialist additionally acts as a member of the child study team.⁶⁶ All child study team members must be employees of a school district, and must have an established time during school hours when they are available.⁶⁷

The IEP team, which includes members of the child study team, consists of:

- The child's parents.
- At least one of the child's general education teachers, if the child is or may be participating in the general education classroom. While not all of the child's general education teachers must attend the meeting, their input into the child's educational program should be sought and documented.
- At least one of the child's special education teachers or, where appropriate, at least one special education provider who is familiar with the child's educational performance.
- At least one child study team member who can interpret the instructional implications of the evaluation results.
- The case manager.
- A representative of the school district, who may be a child study team member, special education administrator or principal, and who (1) is qualified to provide or supervise special education; (2) is knowledgeable about the general education curriculum; and (3) is knowledgeable about the availability of the resources of the school district.
- The child, whenever appropriate.
- If the purpose of the meeting is to consider transition services, which are discussed in this manual at p. 43, the child and a representative of any other agency that is likely to be responsible for providing or paying for transition services must be invited to attend.

- Any other person, who either the parent or school district wants to attend, who has knowledge or special expertise regarding the child.
- In the case of a child who has received early intervention services, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Early Intervention Program coordinator, and, at the preschool transition planning meeting, the parent must be provided a form with which to request the invitation.⁶⁸

Child study team members may conduct evaluations and deliver related services to children with disabilities and provide services, support and training to the general education staff who work with children with disabilities.⁶⁹ The IEP team, on the other hand, is responsible for the child's initial evaluation, eligibility determination, development, review and revision of the IEP, the child's reevaluation and placement of the child.⁷⁰

As set forth in this manual at pp. 10, 13, 19, not all child study team members are required to participate in each phase of service, although for some duties, such as deciding whether to conduct an initial evaluation of a child, all members must participate.⁷¹

A case manager, assigned for each child with a disability, is designated when a decision is made to conduct an initial evaluation of a child suspected of having a disability.⁷² A member of the child study team (which, in the case of a child suspected or known to have a speech-language disability, includes a speech-language specialist) must serve as the case manager.⁷³ The case manager must be knowledgeable about the child's educational needs and program and about special education procedures and procedural protections.⁷⁴ The case manager is responsible for coordinating the development, monitoring and evaluation of the effectiveness of the child's IEP; facilitating communication between the home and school; coordinating the annual review and reevaluation processes; and engages in transition planning.⁷⁵

“A direct referral to the child study team must be made whenever a parent requests an evaluation.”

LOCATION, IDENTIFICATION AND REFERRAL

All children (age three through 21) with disabilities, including those attending nonpublic schools, who are in need of special education and related services, must be located, identified referred for evaluation and evaluated.⁷⁶ This is known as the school district's “child find” obligation.⁷⁷ Each school district must have written procedures for locating and referring children for evaluation, including children who attend nonpublic schools, who may have a disability due to physical, sensory, emotional, communication, cognitive or social difficulties.⁷⁸ These procedures apply to “highly mobile” children, such as migrant and homeless children,⁷⁹ and to children who may have a disability, even if they are advancing from grade to grade.⁸⁰

The procedures must allow for referral by any member of the staff of the school district, including teachers, as well as parents and outside agencies concerned with the welfare of the child.⁸¹ A school district's procedures must ensure that its staff, including teachers, refer children to the child study team if they become aware that a child is having academic or behavioral problems which may result from a disability.⁸²

Generally, school districts must provide “interventions” available through their Intervention and Referral Services program (sometimes referred to as a pupil resource committee (PRC), pupil assistance committee (PAC) or student resource committee (SRC)) in the general education setting to children exhibiting academic difficulties, and such interventions should be utilized, as appropriate, prior to referring a child for an evaluation of eligibility for special education and related services.⁸³ Such services may include remedial

instruction or counseling. However, a direct referral to the child study team **must** be made whenever a parent requests an evaluation.⁸⁴ A direct referral **may** be made when an evaluation is “warranted without delay.”⁸⁵

The staff of the general education program must 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.⁸⁶ When it is determined that general education interventions have not adequately addressed the educational difficulties, and it is believed that the child may have a disability, the child must be referred for evaluation to determine eligibility.⁸⁷

For nonpublic elementary and secondary school children, the child-find obligations are the responsibility of the school district in which the nonpublic school which the child attends is located.⁸⁸ For preschool age children enrolled in early childhood programs, the child-find obligations are the responsibility of the school district where the parent of the child lives.⁸⁹

Parental Requests for Initial Evaluations

A parent may make a written request for an evaluation to determine whether his or her child is eligible for special education and related services.⁹⁰ Such a request must be treated as a referral and must be forwarded without delay to the child study team for consideration.⁹¹ The parent should address the written request for evaluation to the school district’s child study team, with a copy to the school district’s director of special education or special services. The letter should be dated, and it should explain the nature of the child’s difficulties and why the parent thinks the evaluation is needed. In addition, the parent should provide his or her written consent to the evaluation in this letter, since such consent starts the clock for the implementation of services to an eligible child.⁹² Parental consent to evaluate is discussed in this manual at p. 11. The parent should keep a copy of this letter for his or her records. A sample letter requesting an evaluation can be found in Appendix D of this manual.

Determinations of Whether Evaluations are Warranted

When a child is referred for an initial evaluation to determine eligibility for special education and related services, a meeting of the child study team, the parent and the general education teacher of the child who is knowledgeable about the child’s educational performance must be convened within 20 calendar days (excluding school holidays, but not excluding summer vacation) of the written request.⁹³ Whenever there is a referral of a preschool age child or a child suspected of having a language disorder, a speech-language specialist must participate as an additional member of the child study team in this meeting.⁹⁴ This group must determine whether an evaluation is warranted and, if so, the nature and scope of the evaluation.⁹⁵ It may determine that an evaluation is not warranted, in which case it must decide what other appropriate action is warranted.⁹⁶ A parent must be provided with written notice of the group’s determination within 15 days of the meeting.⁹⁷ If it is determined that an evaluation is warranted, the notice must describe the types of assessments to be performed, and a request for consent to evaluate must be included with the notice.⁹⁸ The consent to evaluate a preschool age child must be obtained without delay.⁹⁹

The types of assessments which must be included in all initial evaluations, and others which may be conducted at the request of the parent or child study team, are discussed in this manual at p. 13.

When it is determined that an evaluation for eligibility for special education services is warranted, the child is considered identified as “potentially a child with a disability,” and special discipline protections available to children with disabilities under IDEA apply, as discussed in this manual at p. 46.¹⁰⁰

Parental Consent for Initial Evaluations

A school district may not conduct any initial evaluation assessments of a child without first obtaining informed consent in writing from the parent.¹⁰¹ Under IDEA, the word “consent” means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication.¹⁰² It also means that the parent understands, and agrees in writing to the implementation of, that activity.¹⁰³ The written consent must describe the activity and list any records that will be released, and to whom they will be released, in connection with the activity.¹⁰⁴ In granting consent, the parent must understand that doing so is voluntary and that consent may be revoked at any time.¹⁰⁵

Upon receipt of parental consent to conduct an initial evaluation, the school district must conduct the assessments without delay.¹⁰⁶ After parental consent to evaluate has been received, the evaluation, determination of eligibility, and if eligible, development and implementation of the IEP for the child must be completed within 90 days.¹⁰⁷ As mentioned, a parent’s consent to evaluate is voluntary, and it may be revoked in writing at any time before the evaluation is completed.¹⁰⁸

If a parent refuses to consent to an initial evaluation, the school district may, but does not have to, request a due process hearing before an administrative law judge (ALJ) to seek an order to compel the parent to provide consent.¹⁰⁹ Due process hearings are discussed in this manual at p. 32. A school district will not be held in violation of its obligations to identify and evaluate a child if the parent refuses to consent to an initial evaluation and the school district does not pursue the evaluation through a due process hearing.¹¹⁰ However, if the child study team has determined that an evaluation is warranted, a school district must at least make “reasonable efforts” to obtain informed consent from the parent, and must document these efforts.¹¹¹ **A school district is prohibited from conducting an initial evaluation of a child unless it obtains either parental consent or an administrative order allowing the evaluation.**¹¹²

If a parent repeatedly fails or refuses to produce a child for an initial evaluation, the 90-day timeframe for IEP implementation does not apply.¹¹³ If a child transfers from one school district to another after a parent has consented to an initial evaluation, but before the first school district completes the evaluation, the parent and the second school district **may** agree to a specific modification of this timeframe, so long as the second school district is making progress that will ensure the prompt completion of the evaluation.¹¹⁴

If a parent does not agree with the school district’s decisions about the evaluation—whether or not to evaluate or the types of evaluations to be performed—he or she may request mediation or a due process hearing to contest the action and attempt to change the school district’s decisions.¹¹⁵ Mediation and due process hearings are discussed in this manual at pp. 32, 38.

Referrals for Speech-Language Services Only

If a referral for a suspected speech disability involves a disorder of voice, articulation and/or fluency only,¹¹⁶ as opposed to a language disorder,¹¹⁷ the determination of whether an evaluation is warranted, and if so, the nature and scope of the evaluation, may be made at a meeting with the speech-language specialist, the parent and the child’s general education teacher, without the full child study team.¹¹⁸ If, in the course of the meeting, in the process of evaluating the child, or after a child has been determined eligible for speech language services only, other disabilities are suspected, the child must be referred for a full child study team evaluation.¹¹⁹

“Before a child is initially provided special education or related services, he or she must be assessed and observed by the school district’s child study team and, depending on the nature of the suspected disability, other outside professionals, at no cost to the parent.”

Referrals of Preschool-Age Children

To facilitate the transition to preschool for a child receiving Early Intervention services, a child study team member must participate in the preschool transition planning meeting arranged by the Early Intervention service coordinator (also known as the Part C service coordinator).¹²⁰ The child study team member must (1) review the child’s Early Intervention Individualized Family Service Plan (IFSP), (2) provide the parents with written school district registration requirements, (3) provide the parents written information on available school district programs for preschool children, including options available for placement in general education classrooms, and (4) provide the parents a form with which to request that the school district invite the Early Intervention service coordinator to the child’s initial IEP meeting after a determination of eligibility.¹²¹

Preschoolers must have their IEPs implemented no later than age three.¹²² To ensure that the IEP is implemented no later than age three, the parent should forward a written request for initial evaluation to the school district at least 120 days prior to the child attaining the age of three.¹²³ For a child receiving Early Intervention services, the parent should submit to the district the form the parent received from the child study team member to request that the school district invite the Early Intervention coordinator to the initial IEP meeting, along with the request for the initial evaluation.¹²⁴

EVALUATIONS AND RE-EVALUATIONS

Before a child is initially provided special education or related services, he or she must be assessed and observed by the school district’s child study team and, depending on the nature of the suspected disability, other outside professionals, at no cost to the parent.¹²⁵ In the case of a child with a suspected language disorder, a speech-language specialist must also evaluate the child.¹²⁶ The process by which a child is assessed and observed to determine a) if the child has a disability, and b) the nature and extent of the special education and related services that the child needs, is called an “evaluation.”¹²⁷ The results of this evaluation must be prepared in a written report.¹²⁸

The evaluation will be used to decide whether the child has a disability and needs special education and related services.¹²⁹ The evaluation results will also be part of the basis for designing the child’s educational program, including the extent to which the child will participate in the general education curriculum.¹³⁰ The evaluation will help determine which additions or modifications to the special or general education program are needed to help the child meet his or her annual goals, and to take part in and progress in the general curriculum.¹³¹ It is important, then, that an evaluation determine the child’s strengths, as well as areas of difficulty, his or her learning style, the types of instruction that would be successful with the child and the styles that have been tried and have not worked.

Evaluations must be selected and administered in such a way as not to discriminate on a racial or cultural basis.¹³² In addition, assessments must be administered in the language and form most likely to yield accurate information on what the child knows and can do, unless it is clearly not feasible to do so.¹³³ So, for example, a child who speaks little English is most likely entitled to be evaluated by someone who speaks the child’s language. Evaluations must also take into account a child’s disability to assure that the evaluation is fair.¹³⁴ For example, a child who is blind should not be given a written assessment.

Initial Evaluations

The school district must provide every child referred to the child study team for

evaluation with audiometric (hearing) and vision screening.¹³⁵ Additionally, upon receipt of a written referral for evaluation, the school nurse must review and summarize the available health and medical information for the child, including information provided by the parent, and send the summary to the child study team to determine whether the child needs a health appraisal or specialized medical evaluation.¹³⁶

As discussed in this manual at p. 10, upon receipt of a referral for evaluation by a school staff member or the child's parent, the child study team must convene a meeting with the parent and the child's general education teacher to decide whether the child should be evaluated for special education, and the nature and scope of the evaluations to be performed.¹³⁷ If this group decides that an evaluation is warranted, the group then must decide what type of evaluations will be conducted.¹³⁸

In determining the nature and scope of the evaluation, the child study team, parent and general education teacher must review all existing evaluation data, including evaluations and information provided by the parent, current classroom-based assessments and observations of teachers and related service providers.¹³⁹ The initial evaluation must be comprehensive and individualized.¹⁴⁰ The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, social and emotional status, general intelligence, academic performance, communication status and motor abilities.¹⁴¹ The child study team, parent and general education teacher must consider the health summary provided by the school nurse, and determine the child's need for a general health appraisal (physical exam) or a specialized medical evaluation, such as a neurological or psychiatric assessment.¹⁴²

The initial evaluation must include assessment by at least two members of the child study team, and other specialists as deemed necessary.¹⁴³ The parent, general education teacher and child study team members decide together which members of the child study team—the school psychologist, school social worker or learning disabilities teacher/consultant—will conduct the evaluation and what, if any, additional evaluations are needed, depending on the nature of the child's suspected disability.¹⁴⁴ Additional assessments are mandated for some categories of disability. For example, an evaluation by a physician qualified to perform neuro-developmental assessments is needed for a child suspected of having autism,¹⁴⁵ an evaluation by a specialist qualified to determine a visual disability is needed for a child suspected of having a visual impairment¹⁴⁶ and a medical assessment is needed to document any of the health conditions, including attention deficit hyperactivity disorder (ADHD), listed under the category "Other Health Impaired."¹⁴⁷ The different categories of eligibility for special education and the requirements for each category are listed in Appendix B of this manual. The regulations regarding eligibility for speech-language services are set forth in Appendix C of this manual.

If a child has not had regular and thorough pediatric examinations, the parent should insist that the school district arrange and pay for a comprehensive medical assessment. The purpose of this assessment is to detect any medical cause for the child's learning or behavioral difficulty in school. Further, it is important that a parent insist that his or her child be evaluated and examined by experts in all suspected areas of disability. An assessment by an expert in the field of the suspected disability will confirm or rule out the suspected disability. If the disability is confirmed, the assessment should also include a plan and specific strategies for an appropriate educational program, which targets the educational and behavioral needs of the child.

The initial evaluation must identify all of the child's special education and related services needs, not just the needs related to the child's suspected disability category.¹⁴⁸ For example, school district staff may suspect that a child has a specific learning disability such as dyslexia, and plan to evaluate the nature and extent of the reading disorder through a variety of standardized assessments, clinical and classroom observations and parent and

“The initial evaluation must identify all of the child’s special education and related services needs, not just the needs related to the child’s suspected disability category.”

teacher interviews. However, if, due to frustration related to the reading disorder, the child has developed behavioral problems in school, the initial evaluation must also identify and assess the child's need for behavioral interventions.

The child study team cannot use a single assessment or procedure as the only basis for determining whether the child has a disability, or for determining an appropriate educational program for the child.¹⁴⁹ A variety of assessment tools and strategies must be used to gather information about the child's development and level of functioning, including information about how the child can be involved, and progress, in the general school curriculum.¹⁵⁰ Information provided by the parent regarding development and functioning is an important assessment tool, and must be considered by the child study team.¹⁵¹

Standardized assessments given to a child as part of an evaluation must be individually administered, technically sound, validated for the specific purpose for which they are used and administered by trained and knowledgeable school district staff.¹⁵² The evaluators must select assessments which assess specific areas of educational need, such as reading comprehension and auditory processing skills, rather than merely provide a single general intelligence quotient (IQ).¹⁵³

An initial evaluation must also include a **functional** assessment of academic performance.¹⁵⁴ If behavior is a problem for a child, then a **functional behavioral assessment** must also take place.¹⁵⁵ A functional assessment is a study of how the child is actually doing in school, and includes the following parts: a structured observation by at least one evaluator in a setting outside the assessment environment; an interview with the child's parents; an interview with the teacher(s) who referred the child for evaluation; a review of the child's developmental and educational history; a review of classroom interventions tried and documented by the classroom teacher and others who work with the child; and one or more informal measures, such as an analysis of the child's work, trial teaching methods, the child's own report of how he or she is doing and curriculum-based assessments.¹⁵⁶

It is important to remember that an initial evaluation must include information related to the involvement and progression of the child in the general curriculum.¹⁵⁷ The evaluation must address additions and modifications to both the general education and special education programs which would allow the child to be educated in the least restrictive environment.¹⁵⁸

Finally, beginning at age 14, or younger if appropriate, the evaluation of a child with a disability must include assessment(s) to determine appropriate post-secondary outcomes, that is, an assessment of what the child is capable of doing, and wants to do, after high school.¹⁵⁹ This is discussed in the Transition Planning and Services section of this manual at p. 43.

Written Evaluation Reports

All child study team members and other specialists conducting an assessment of the child must prepare a written report of the results of the assessment.¹⁶⁰ The report may be done either collaboratively by the evaluators, or each individual evaluator may prepare his or her own report.¹⁶¹ The reports must be dated and signed by the evaluator, and must contain, at a minimum, the following information: (1) an appraisal of the child's current level of functioning and an analysis of how that functioning impacts on instruction; and (2) a statement of relevant behavior of the child, either reported or observed, and the relationship of the behavior to the child's academic performance.¹⁶² Additionally, each member of the IEP team determining eligibility of the child must certify in writing whether his or her evaluation report is in accordance with the IEP team's conclusion on eligibility.¹⁶³ Any team member whose report is not in accordance with the IEP team's conclusion on eligibility, must submit a separate statement presenting his or her conclusions.¹⁶⁴

A parent must be provided with a copy of the evaluation report(s) and

documentation and information that will be used for a determination of a child's eligibility for special education and related services, at least ten calendar days before the eligibility determination meeting is held.¹⁶⁵ It is very important that the parent read all evaluation reports before the meeting to determine the child's eligibility and the meeting to develop the child's IEP. These meetings are discussed in this manual at p. 19. In addition to evaluation reports, a parent has the right to copies of all school records, discussed in this manual at p. 44.

Consideration of Non-District Reports and Evaluations

As part of the eligibility determination, the IEP team must consider any evaluations and reports obtained by the parent or the school district.¹⁶⁶

Additional Requirements for Children Suspected of Having Specific Learning Disabilities

School districts are **no longer required** to take into consideration whether a child has a "severe discrepancy" between achievement and ability when determining whether a child has a specific learning disability,¹⁶⁷ although State regulations still **permit** school districts to take a child's "severe discrepancy" into consideration.¹⁶⁸ In addition, the IEP team determining eligibility on the basis of specific learning disability must consider (1) documentation demonstrating that prior to, or as part of, the referral process, the child was provided appropriate instruction in general education settings, and (2) documentation of repeated assessments of the child's progress during instruction.¹⁶⁹ It should be noted that, while the school district must consider such documentation, the school district is not obligated to attempt some level of general education intervention prior to referring a child who is suspected of having a specific learning disability for a special education evaluation.¹⁷⁰

The structured observation required as a part of the functional assessment for a child suspected of having a specific learning disability must be of the child's academic performance in the general education classroom.¹⁷¹ In other words, at least one member of the child study team must observe the child in the classroom setting and assess how he or she is doing academically.

If the child does not have a general education teacher who is familiar with his or her work, a general education teacher qualified to teach a child of his or her age must participate on the team determining the child's eligibility.¹⁷² See discussion of Determining Eligibility for Special Education and Related Services in this manual at p. 19.

Whenever a child is suspected of having a specific learning disability, the written report documenting the determination of eligibility for the child must include (1) a statement of whether the child has a specific learning disability; (2) the basis for the determination; (3) observation of the child's behavior; (4) the relationship of the behavior to the child's academic functioning; (5) educationally relevant medical findings; (6) if a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; (7) the determination concerning the effects of environmental, cultural, or economic disadvantage; (8) whether the child achieves commensurate with her or her age; (9) if a response to scientifically based intervention (RTI) methodology is utilized, the instructional strategies utilized and the child-centered data collected with respect to the child; and, (10) whether there are strengths or weaknesses, or both, in performance or achievement relative to intellectual development in one or more listed areas that requires special education and related services.¹⁷³

New Jersey regulations permit school districts to use either a severe discrepancy or an RTI model.¹⁷⁴ If a school district utilizes a severe discrepancy model, it must adopt

“...once a child is deemed eligible for special education, the CST must conduct a re-evaluation every three years to determine whether the student continues to have a disability that renders him or her eligible for special education and related services.”

procedures that utilize a statistical formula and criteria for determining severe discrepancy.¹⁷⁵ If the school district uses an RTI model, the documentation of eligibility must include a statement indicating that the child’s parent was notified about (1) the State’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (2) strategies for increasing the child’s rate of learning; and (3) the parent’s right to request an evaluation.¹⁷⁶

The definition of the term “specific learning disability” can be found in Appendix B of this manual.

Separate Requirements for a Child Suspected of Having a Speech or Language Disorder, and who only Requires Speech-Language Services

A child suspected of having only a speech disorder related to articulation, voice or fluency, or a language disorder which only requires speech-language services, not special education, may be evaluated by the school district’s speech-language specialist, rather than members of the child study team.¹⁷⁷ Similar to the process described above for children suspected of having other disabilities, the speech-language specialist must convene a meeting with the parent and the child’s classroom teacher to review existing information and assessments, current classroom-based assessments and observations of the parent and teacher.¹⁷⁸ The speech-language specialist must obtain parental consent to evaluate, and conduct an assessment of the child, in accordance with the requirements for a special education evaluation discussed above.¹⁷⁹ The evaluation must also include information from the classroom teacher regarding the educational impact created by the speech problem.¹⁸⁰ The specialist must prepare a written report of the results of the assessment.¹⁸¹ If, in the course of evaluating the child, it is determined that the child might have another disability or might need other services, the child must be referred for a full child study team evaluation.¹⁸²

The regulations regarding eligibility for speech-language services are set forth in Appendix C of this manual.

Reevaluations

Every child receiving special education services must be re-evaluated pursuant to the procedures mentioned above whenever the child’s educational or related services needs warrant a reevaluation or if the child’s parent or teacher requests a reevaluation.¹⁸³ A reevaluation must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.¹⁸⁴ However, a child may not be re-evaluated more frequently than once a year, unless the parent and the school district agree that more than one reevaluation is warranted.¹⁸⁵ A reevaluation is likely to be warranted whenever a significant change in placement is being considered.¹⁸⁶ A reevaluation is mandated whenever a school district is considering declassifying the child as eligible for special education, or changing the disability category that serves as the basis of eligibility, although a school district does not have to re-evaluate a child who is no longer eligible for special education because he or she has graduated with a diploma or exceeds the age of 21.¹⁸⁷ If a parent believes that a special education program is not working for his or her child, it may be useful to obtain a reevaluation before the three-year period has lapsed to help determine what program changes should be made.

As part of any reevaluation, the IEP team, discussed in this manual at p. *, must meet to review existing assessment data and, based on that review and input from the parent, determine what additional data, if any, are needed.¹⁸⁸ If the IEP team, and other qualified professionals, as appropriate, determine that no additional assessment is needed to determine whether the child continues to be a child with a disability, the school district must notify the parents in writing of that determination, the reasons for the determination

and the parents' right to request additional assessments to determine if the child remains eligible for special education.¹⁸⁹

Like the initial evaluation, a reevaluation must be thorough enough to determine (1) if the child should continue in special education, and (2) what changes, if any, should be made to the child's program or related services.¹⁹⁰ Similarly, the reevaluation must include a review of all assessments, information from the parent, classroom observations and the observations of teachers and related service personnel.¹⁹¹ The reevaluation must also decide which additions or modifications are needed to help the child meet his or her goals and take part, and progress, in the general curriculum.¹⁹²

A parent who wants a reevaluation should send his or her request in writing to the child's case manager, with a copy to the school district's director of special education or special services. The IEP team must complete the reevaluation within 60 days of the date the parent provides consent for the assessments to be conducted as part of the reevaluation.¹⁹³ A parent who wants additional assessments as part of a reevaluation should submit his or her request in writing to the case manager. A parent has the right to request mediation or a due process hearing to resolve any dispute regarding the scope of the reevaluation and additional assessments.¹⁹⁴

A sample letter requesting a reevaluation can be found in Appendix E of this manual.

The Right to Independent Educational Evaluations

A parent has the right to obtain evaluations from qualified professionals who are not employed by the school district and submit them to the IEP team.¹⁹⁵ These reports are called "independent educational evaluations" or "independent evaluations,"¹⁹⁶ and are sometimes referred to as "expert reports." The IEP team must consider the results of any independent evaluations or expert reports the parent submits during any evaluation of the child¹⁹⁷ or at any other time.¹⁹⁸ This is discussed further in this manual at p. 15.

A parent also has the right to request that the school district pay for an "independent educational evaluation" of his or her child if he or she disagrees with the school district's evaluation.¹⁹⁹ A request for an independent educational evaluation at the school district's expense should be made in writing and should be submitted to the case manager, with a copy to the director of special education or special services. While a school district may ask a parent to explain why he or she objects to its evaluation, a parent is not required to provide the reason why he or she disagrees with the school district's evaluation.²⁰⁰ A sample letter requesting an independent evaluation is in Appendix F of this manual.

Upon receipt of the parent's request for an independent educational evaluation at school district expense, the school district must provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluators.²⁰¹ An independent education evaluation may be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved by the State, or a private practitioner, who is appropriately certified or licensed.²⁰² An independent medical evaluation may be obtained from a licensed physician, clinic or hospital.²⁰³

Any other criteria imposed by a school district, including criteria related to the location of the evaluation or the qualifications of the examiner, must be the same as the criteria used by the school district when it initiates an evaluation, so long as such criteria are not inconsistent with the parent's right to an independent educational evaluation.²⁰⁴ While a school district must provide a parent with information about where an independent evaluation may be obtained, it cannot limit the parent's choice to only a few independent evaluators whom it prefers.²⁰⁵ The school district should provide the parent with information regarding all qualified evaluators within the geographic area. The independent evaluator cannot be employed by the school district.²⁰⁶

"A parent also has the right to request that the school system pay for an independent evaluation of his or her child if he or she disagrees with the district's evaluation."

“The IEP is developed at a meeting by a team that includes the child’s parent as an equal member, along with the child study team and other professionals.”

If a parent requests an independent evaluation in an area not assessed as part of an initial evaluation or reevaluation, the school district does not have the right to first conduct the requested evaluation itself.²⁰⁷

In response to all written requests for an independent educational evaluation, the school district must take steps to ensure that the requested evaluation is provided without **undue or unnecessary** delay, unless, within 20 calendar days of receipt of the parent’s request for an independent educational evaluation, it files a request for a due process hearing to show that its evaluation is appropriate, or that the evaluation requested by the parent does not meet applicable criteria.²¹¹ A school district must pay for an independent evaluation requested by a parent, unless it files for a due process hearing and proves to an ALJ that its evaluation is appropriate or that the evaluation requested by the parent does not meet applicable criteria.²¹² A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees,²¹³ so it is important to ensure that any request for an independent educational evaluation include all assessments that the parent wants.

Whether an independent evaluation is paid for by the school district or is obtained at the parent’s own expense, the independent evaluator selected should understand the eligibility criteria for special education and related services. The independent evaluation must comply with the evaluation requirements which child study teams must follow²¹⁴ and which are discussed in this manual at p. 12. For example, the independent evaluator must perform a functional assessment, interview the child’s classroom teacher and parent and observe the child in a non-assessment setting. The parent should specifically request that the independent evaluator visit the child’s current classroom and observe any program being recommended by the school district. A school district may not deny permission to any independent evaluator to observe the child in the classroom or other educational setting, whether the evaluation is paid for by the school district or by the parent.²¹⁵ Additionally, the parent should make clear to the independent evaluator that he or she expects the evaluation to contain specific program recommendations, not only as to class type and program setting, but also regarding particular services, program modifications and accommodations needed by the child. The independent evaluator should address the following in the report regarding related services: the types of services needed by the child; where the services should be provided; how often the child should receive the services; how long each service session should be; the group size in which the services should be provided; and why the services are needed to help the child benefit from the proposed educational program. **A school district may NOT ask an independent evaluator to omit recommendations as to specific educational and related services, methodologies, programs or placements.**²¹⁶

It is important to note that, in the course of a due process hearing, an ALJ may order an independent educational evaluation of the child.²¹⁷ In that case, the evaluation must be conducted in accordance with requirements for all evaluations by an appropriately certified or licensed professional examiner(s) who is not employed by, and does not routinely provide evaluations for, the school district or any other public agency responsible for the education of the child to be evaluated.²¹⁸ The independent evaluator must be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties.²¹⁹ The school district must obtain and pay for the independent evaluation in accordance with the order of the ALJ.²²⁰

Initial eligibility for special education and related services must be determined collaboratively by the participants at the eligibility meeting²²¹, and the following individuals are required to attend that meeting:

- The parent;
- The child, where appropriate;
- At least one of the child's general education teachers;
- At least one member of the child study team who participated in the evaluation;
- The case manager;
- Other individuals whom the parent or school district want to attend;
- Certified school personnel (classroom teacher, special education teacher) who referred the child for evaluation, or the school principal or designee if they choose to participate.
- When a child is evaluated for a language disorder, the speech-language specialist who conducted the evaluation.²²²

A child is eligible for special education and related services if he or she has one or more of the disabilities defined in the state code (disability definitions are in Appendices B and C of this manual), the disability adversely affects the child's educational performance; and the child is in need of special education and related services.²²³ An eligibility determination must be based on all evaluations of the child, including child study team and independent evaluations.²²⁴ A child cannot be determined eligible for special education if his or her school difficulties are based primarily on lack of instruction in reading or math, or limited English proficiency.²²⁵

The school district must send the parent written notice of the eligibility team's determination, which explains the parent's right to disagree and request mediation or a due process hearing.²²⁶ The notice requirements are described in this manual at p. 31. A school district cannot provide a child with special education and related services unless the parent consents to the initial implementation of those services,²²⁷ as discussed in this manual at p. 21.

INDIVIDUALIZED EDUCATION PROGRAMS

Every child eligible for special education and related services is entitled to an IEP, and an IEP must be in place before the child can receive special education and related services.²²⁸ The IEP is a written plan that sets forth the special education programs and related services and supplementary aids and services the child will receive.²²⁹ The IEP is developed at a meeting by a team that includes the child's parent as an equal member, along with the child study team and other professionals.²³⁰

The IEP must address the child's academic and functional needs, including non-academic needs related to behavior, social-emotional functioning and life skills.²³¹ The IEP must include, where practicable, research-based instructional strategies and services designed to meet the child's individual needs.²³² General high standards applicable to all children must apply to children with disabilities²³³, and children with disabilities must be given access to the general curriculum²³⁴, and children with disabilities must be included in State and district assessment programs.²³⁵ For children turning 16, the IEP must include results-oriented transition services designed to meet assessment-based, individualized, measurable goals related to post-secondary training, education, employment and, where appropriate, independent living skills.²³⁶

All children with disabilities must be considered for placement in the general education classroom with the support of supplementary aids and services, including curricular or instructional modifications or specialized instruction strategies, assistive technology, teacher aides, related services, integrated therapies, consultation services and in-class resource programs.²³⁷ A child may not be removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum,²³⁸ and the child may not be removed from the general education classroom unless it is determined that the child cannot remain in that setting, even with the support of supplementary aids and services.²³⁹

An IEP must include all the programs and services necessary to meet the child's individual needs as identified during the evaluation and reevaluation process.²⁴⁰

IEP Meetings

The IEP must be developed at a meeting with the child's parents.²⁴¹ **While the child study team may develop a draft IEP to share and discuss with the parent and other members of the IEP team at the IEP team meeting, the child study team may not decide what will be included in the IEP prior to the meeting.**²⁴² The IEP meeting to develop the IEP must be scheduled within 30 calendar days of a determination that a child is eligible for special education and related services or speech-language services.²⁴³ The meeting must be scheduled at a time and place convenient to the parent and school district officials.²⁴⁴ The case manager must make every effort to ensure that the child's parent attends the IEP meeting.²⁴⁵ The parent must be notified in writing of the purpose, time and location of the meeting and of the other people who will be invited to attend.²⁴⁶ The parent must also be notified of his or her procedural rights and the means to obtain a copy of them.²⁴⁷ The notice must be sent in the language used by the parent,²⁴⁸ and must be sent early enough for the parent to make arrangements to attend the meeting.²⁴⁹ If the parent cannot attend the meeting, the case manager should arrange for parental participation by other means such as by videoconferencing or telephone conference.²⁵⁰

A member of the IEP team may be excused from attending all or part of an IEP team meeting where the member's area of the curriculum or related services is not being modified or discussed, but only if the parent consents in writing to the member's absence.²⁵¹ A member may also be excused, even if the member's area of the curriculum or related services is being modified or discussed, if the member submits written input to the parent and IEP Team related to the development of the IEP, and the parent and the school district consent to the absence and the parent and school district agree that the member's attendance is unnecessary.²⁵² Any request for an IEP member to be excused from an IEP team meeting, and any needed written input of that member, must be provided to the parent with the notice of the IEP team meeting to ensure sufficient time for the parent to review and consider the request.²⁵³ A parent may want to specifically ensure that certain IEP Team members are present at IEP meetings. A sample letter requesting IEP Team member presence can be found in Appendix H of this manual.

Parents, as well as school district officials, may audio-tape record an IEP meeting, so long as they provide notice of their intent to do so prior to the meeting.²⁵⁴ If a parent anticipates disagreement with the school district, it may be a good idea to bring a friend or family member for support, note-taking and a different perspective.

The meeting must be conducted in the language used for communication by the parent, unless it is clearly not feasible to do so.²⁵⁵ Foreign language interpreters or translators and sign language interpreters for people who are deaf must be provided by the school district at no cost to the parent.²⁵⁶

At the end of the IEP meeting, the parent must be provided a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team.²⁵⁷ If the parent and child study team are not able to agree on an IEP, the child study team must develop the IEP.²⁵⁸ Within 15 calendar days of the meeting, the parent must also be provided written notice of the proposed IEP and placement which comports with the notice requirements discussed in this manual at p. 31.²⁵⁹ This notice may also be handed to the parent at the end of the meeting. Whether at the end of the meeting or some time thereafter, the school district must provide the parent with a free copy of the IEP.²⁶⁰

Parental Consent to IEPs

While the parent will be asked to sign a record of who participated in the IEP meeting, the parent is not required to sign anything indicating agreement or disagreement with the IEP. However, the initial IEP may not be implemented without written parental consent.²⁶¹ Consent is discussed generally in this manual at p. 11.

On the other hand, parental consent or approval is not required to implement any subsequent change to the IEP, so long as the parent is notified in writing of the change, as discussed above, and given at least 15 calendar days to consider the proposed change.²⁶² After the 15 days, the change may go into effect, unless the parent requests mediation or a due process hearing.²⁶³ If the parent requests mediation or a due process hearing within the 15 days, no change to the child's educational program or placement may be made without the parent's consent.²⁶⁴

Although the school district must provide the parent at least 15 calendar days to consider any proposed change to the IEP, it may implement the proposed change sooner if the parent agrees with the change and provides his or her signature indicating consent to the change.²⁶⁵

In general, a parent might wish to withhold approval at the IEP meeting. A parent should insist that he or she receive a hand-written copy of the draft IEP developed at the meeting, or at least written notes setting forth the terms of any changes agreed to or proposed by the school district at the meeting which the parent has the right to take home, read and think about. A parent should consent to the IEP by signing and returning it to the case manager only if he or she thinks the IEP is satisfactory. If a parent is doubtful about some aspect of the IEP, he or she should ask to meet with the IEP team again, and try to work out the differences. If the problems cannot be resolved, a parent may wish to challenge the IEP by requesting mediation or a due process hearing.

IEP Contents

Each IEP must contain the following:

- A statement of the child's "present levels of academic achievement and functional performance," including how the child's disability affects his or her involvement and progress in the general curriculum, or, for a preschool child, how the disability affects his or her participation in appropriate activities.²⁶⁶
- Measurable annual goals, including academic and functional goals designed to (1) meet the child's disability-related needs and enable the child to be involved in, and progress in, the general curriculum, and (2) meet each of the child's other educational needs that result from the child's disability.²⁶⁷ The goals must be detailed and apprise parents and special education services providers of the expected level of achievement for each goal.²⁶⁸ Where appropriate, the goals must be related to the core curriculum content standards through the general education curriculum.²⁶⁹ The goals must include **benchmarks** or **short-term objectives**.²⁷⁰

“The IEP must be implemented as soon as possible and without delay after the IEP meeting, and no later than 90 calendar days from the parent’s written consent to evaluation.”

- A statement of how the child’s progress toward annual goals will be measured.²⁷¹
- A statement of how the child’s parents will be regularly informed of the child’s progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. The parents must be informed of the child’s progress at least as often as the parents of non-disabled children are informed of their children’s progress.²⁷²
- The specific special education and related services and supplementary aids and services that will be provided to the child, which must be based, “to the extent practicable,” on scientific research, and program modifications or supports for school personnel that will be provided for the child.²⁷³ These services, aids, modifications and supports must be designed to enable the child to (1) advance appropriately toward attaining the annual academic and functional goals, (2) be involved in, and progress in, the general education curriculum, and participate in extracurricular and other nonacademic activities, and (3) be educated with, and participate with, other children with disabilities and non-disabled children.²⁷⁴
- The projected date for the beginning of services and modifications, and the frequency, location and duration of those services and modifications.²⁷⁵
- An explanation of the extent, if any, to which the child will not participate with non-disabled children in the general education class and in extracurricular and nonacademic activities.²⁷⁶
- Any integrated therapy services to be provided to address the child’s individualized needs in his or her educational setting.²⁷⁷
- For children in an out-of-district placement, how the child will participate with non-disabled peers in extracurricular and nonacademic activities, and the means to achieve such participation, including, if necessary, returning the child to the district in order to effectuate such participation.²⁷⁸
- Individual modifications in the administration of Statewide or district-wide assessments of child achievement needed for the child to participate in such assessments. If the district determines the child will not participate in any such assessment, an explanation of why, and a description of how the child’s achievement will be assessed.²⁷⁹
- Transition services from an elementary program to a secondary program, which are to be determined by such factors as the child’s age, the number of years in school and social, academic and vocational development.²⁸⁰
- Beginning at age 14, the State and local graduation requirements that the child will be expected to meet. If the child is exempted from, or modifications are provided for, graduation requirements, the basis of the exemption or modifications and a description of alternate proficiencies to be achieved by the child to earn a State diploma.²⁸¹
- Beginning with the IEP in place for the school year when the child will turn age 14, or younger if appropriate, transition services planning, as discussed in this manual at p. 43.²⁸²
- Beginning with the IEP in place for the school year when the child will turn age 16, measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and transition services designed to meet those goals, as discussed in this manual at p. 43.²⁸³
- Beginning at least three years before the child reaches the age of 18, a statement that the child and the parent have been informed of the rights that will transfer to the child upon reaching the age of majority.²⁸⁴

Special Factors to Consider when Developing IEPs

When developing the IEP, the IEP team must consider:

- The strengths of the child and the concerns of the parent for enhancing the education of the child;
- The academic, developmental and functional needs of the child;
- The results of the initial evaluation or most recent evaluation of the child and, as appropriate, the child's performance on any general State or district-wide assessment;
- If the child's behavior impedes the learning of the child or that of others, where appropriate, strategies, including positive behavioral interventions and supports, discussed in this manual at p. 47, to address that behavior;
- If the child has limited English proficiency, the language needs of the child;
- If the child is blind or has a visual impairment, the need to provide instruction in Braille and to use Braille, unless the IEP determines, after an evaluation of the child's reading and writing skills, and current and projected needs for instruction in Braille, that such instruction is not appropriate;
- The communication needs of the child;
- If the child is deaf or has a hearing impairment, a) the language and communication needs of the child, b) opportunities for direct communication with peers and professional personnel in the child's language and communication mode, c) the child's academic level, and d) a full range of opportunities for direct instruction in the child's language and communication mode;
- The child's need for assistive technology devices and services, discussed in this manual at p 42.
- Beginning at age 14, the need for consultation with the New Jersey Division of Vocational Rehabilitation Services, the New Jersey Department of Labor and other agencies serving persons with disabilities; and
- For a preschool age child, whether accommodations and modification may be required to allow the child to participate in the general education classroom and activities.²⁸⁵

Tips for Developing IEPs

The following guidelines are designed to assist parents in working with the IEP team to develop a program that meets the needs of their child.

Before the IEP Meeting

1. Read all evaluation reports and the child's school records before attending the IEP meeting. Determine whether the reports contain sufficient objective assessment results to chart the child's progress or lack of progress since prior assessment or, in the case of initial assessment, to establish a baseline upon which to measure the child's future performance.
2. Note the areas of difficulty found in the evaluation reports and other problems seen in the home and outside of school. In other words, think of all of the educational issues that need to be addressed in the educational program.
3. Note the child's strengths and interests, and think about how these positive qualities can help him or her achieve certain educational goals.
4. Contact advocacy organizations to obtain information on developing effective IEPs, and on educational programs, teaching methods and strategies for children with the child's particular disability. A list of such organizations is in Appendix L of this manual.

5. Think about which academic and functional skills the child needs to meet appropriate goals, to make progress in the general curriculum and to participate in the general classroom and extracurricular activities with non-disabled peers, and the kind of help the child needs in order to learn these skills. In particular, think about which teaching methods work best, and which activities interest and motivate the child.
6. Consider which supplementary aids and services, program modifications and supports to school district personnel are currently being provided, and what changes or additions might be made to ensure that the child will be able to make progress in the general curriculum and participate in the general classroom and extracurricular activities with non-disabled peers.
7. Review previous IEPs to determine the areas in which the child had met prior goals and objectives; consider new goals and objectives; and, for those goals and objectives that have not been met, consider different strategies, interventions and programs.
8. Consider consulting with outside experts about the child's educational needs and, if necessary, requesting an independent evaluation at public expense, discussed in this manual at p. 17.
9. Review the school district's notice listing the participants invited to the meeting, and make sure that everyone required to attend the meeting (see discussion in this manual at p. 8), and everyone who has relevant knowledge or special expertise regarding the child has been included on the list of participants. If the child has had an independent evaluation at public expense, have the school district make arrangements for a member of the independent evaluation team to be present at the meeting.

At the IEP meeting

1. Bring to the meeting copies of the child's records, any notes and lists made and any other relevant information about the child.
2. A parent may tape record an IEP meeting, so a parent may wish to bring a tape recorder.
3. Make sure development of the child's IEP starts with a clear understanding of the general curriculum that is required to be mastered by non-disabled children of the same age. Remember that any deviations from the general curriculum must be justified. On the other hand, it is not enough to say a child with a disability will meet general education standards if the child has unique areas of need which are not adequately addressed by the general standards. Such disability-related needs must be addressed by individualized goals.
4. Make sure the meeting is conducted, and the IEP is written in plain, understandable language.
5. Participate in the discussion by contributing what is known about the child's skills, interests, needs, strengths and weaknesses and learning style.
6. Question the school district staff, such as classroom and special education teachers, about which teaching methods work best for the child. Insist that these teaching methods be included in the IEP.
7. If the team agrees on anything related to the child's program and services, insist that it be written into the IEP. For example, if one of the team participants suggests 1:1 speech services, three times a week for 30 minutes per session, and everyone on the IEP team agrees this is what is needed, the IEP must state precisely that this is what the child will receive. If a program and service is not specified in the IEP, the child

has no right to that program and service, even if it was verbally agreed upon at the IEP meeting.

8. Concentrate on the child's future education, not past problems and mistakes made by the school district and the teachers.
9. Insist that the IEP be based on the child's unique learning needs. Do not accept an IEP that is a form checklist, or one that includes only a "watered down" version of general education goals and does not focus on the child's particular learning difficulties.
10. If school districts will not agree to what the parent wants, the parent should suggest moving on to the next issue so that the IEP is as complete and as close to what the parent wants as possible.
11. The parent may bring to the meeting, at his or her discretion, any individuals who have knowledge or special expertise regarding the child, which may include an advocate or family friend.
12. Make sure that each required element of the IEP, discussed in this manual at p. 21, is discussed, a specific decision regarding it is reached and the element is written in detail in the IEP. The present levels of performance should establish a basis for developing the IEP, with the general curriculum standards and the child's individualized goals serving as the basis for the IEP goals. The special education and related services, supplementary aids and services and program modifications and support for personnel describe what will be provided for the child in order to enable the child to meet the general curriculum standards and his or her individualized goals.
13. Make sure goals, objectives and benchmarks are specific and measurable. For example, an objective such as "learn to read" is too vague, because there will be no way to tell at the end of the year whether the objective has been achieved. If instead, the objective is stated as "increase sight vocabulary from 46 words to 250 words," the reading teacher will be able to measure the child's improvement during the year. Insist that the child's progress toward IEP goals and objectives be measured by objective means, such as by assessment, and not simply by subjective teacher observations.

IEP Amendments

The IEP may be amended without a meeting of the IEP team if: (1) the parent requests in writing a specific change to the IEP and the school district agrees, or (2) the school district provides the parent a written proposal to change the IEP and, within 15 days of receiving that proposal, the parent consents in writing to the proposed change.²⁸⁶ All such changes must be incorporated into an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum must be provided to the parent within 15 days of when the school district receives consent from the parent to make the change.²⁸⁷ Even if an IEP is amended as discussed in this paragraph, the child's IEP team must still meet to review the IEP, as discussed below, at least annually, or more often if necessary.²⁸⁸

A sample letter requesting IEP services can be found in Appendix G of this manual.

IEP Review and Revision

An IEP meeting must be held for each classified child at least once a year, and more often if necessary, to review and revise the IEP and determine the child's placement.²⁸⁹ The IEP team must meet within 20 calendar days—excluding school holidays but not excluding summer vacation—to review the IEP if the parent requests in writing that the child's IEP or placement be changed.²⁹⁰ During any review of the IEP, the IEP team must determine

whether the child is achieving the annual goals in the IEP.²⁹¹ The IEP must be revised, as appropriate, to address: (1) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate, (2) the results of any reevaluation, and (3) information about the child, including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related service providers.²⁹²

IEP Implementation

The IEP must be implemented as soon as possible and without delay after the IEP meeting,²⁹³ and no later than 90 calendar days from the parent’s written consent to evaluation.²⁹⁴ Every child that is eligible for special education and related services must also have an IEP in effect at the beginning of each school year.²⁹⁵

All of the child’s teachers, including all general education teachers, must be informed of their responsibilities related to implementing the child’s IEP and specific accommodations, modifications and supports that are necessary for the child to participate in the general education curriculum.²⁹⁶

IEPs of Children who Transfer from One School District to Another

When the child moves 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 child transfers must conduct an immediate review of the child’s evaluation information and IEP and, without delay, in consultation with the child’s parents, provide a program comparable to that set forth in the child’s current IEP, until the new school district either adopts the current IEP or develops and implements a new IEP.²⁹⁷

For a child who transfers from one New Jersey school district to another, if the parent and the new school district agree, the IEP must be adopted and implemented as written.²⁹⁸ If the school district does not agree with the current IEP, the school district must conduct all necessary assessments, and, within 30 days of enrollment, develop and implement a new IEP for the child.²⁹⁹ If the child’s parents disagree with the IEP proposed by the new school district, they may request mediation or a due process hearing with respect to the proposed change, and “stay put” should apply, so long as the request is made within applicable time limits (see discussion on “stay put” in this manual at p. 32).³⁰⁰

For a child who transfers from an out-of-state school district, the new school district must conduct any assessments determined necessary and, within 30 days of enrollment, develop and implement a new IEP for the child.³⁰¹ If the child’s parents disagree with the IEP proposed by the new school district, they may request mediation or a due process hearing, and “stay put” should apply to the IEP that was in place before the child moved to New Jersey.³⁰²

An IEP must be developed for a child before the “**placement**” (where the child’s program should be provided) is decided.³⁰³ This is because, to be appropriate, the chosen placement must be able to implement the program and services described in the IEP. Often, school district officials try to decide placement first, based on what is available, and want to discuss program issues later. A parent must insist on discussing placement issues only after all program issues in the IEP have been decided. **The education program and placement must be tailored to the child, not the child to a pre-packaged program and placement.**³⁰⁴

Determination of Placement at IEP Meetings

The IEP Team must determine the placement at which the special education and related services will be provided.³⁰⁵ In addition, the child’s placement must be a) determined annually, b) based on the child’s IEP and c) as close as possible to the child’s home.³⁰⁶ In New Jersey, the placement decision is made by the IEP team.³⁰⁷ The required members of the IEP team are discussed in this manual at p. 8. Persons knowledgeable about the child, about the meaning of the evaluation data, and about the placement options, must be part of the IEP team that makes the placement decision.³⁰⁸ The parents must be members of any group that makes decisions on the placement of their child.³⁰⁹

Notices of Placement and the Right to Disagree

The school district must provide the parent with written notice of the child’s school and class placement 15 calendar days before implementation of the placement.³¹⁰ The school district must also give the parent the opportunity to visit and observe the school placement, including any placement outside of the school district, prior to implementation.³¹¹ If a parent does not agree to the placement, he or she can request mediation or due process within the 15 days, discussed in this manual at pp. 32, 38, and the child then has the right to stay put in the current educational program until the disagreement is resolved through mediation or due process.³¹² If the parent does not request mediation or due process, the school district can go ahead and implement the placement.³¹³ However, as discussed in this manual at p. 21, the school district cannot implement a child’s first special education placement without written parental consent.³¹⁴

Even if a parent agrees to the program set out in the IEP, including the description of the type of class and school (for example, “self-contained cognitively impaired class in an in-district public school”), the final placement still may not be appropriate for several reasons. For example, the placement may be at a school far from the child’s home; the other children in the proposed class may not be within the child’s age range; or the placement may be in a separate special education school and the parent believes his or her child should attend school in a building with non-disabled children. To decide if a placement is appropriate, a parent should consider whether the classroom is appropriate; whether the school is appropriate; and whether the grouping of children is appropriate in view of the child’s age and learning needs. If a parent believes the placement is inappropriate, he or she may request mediation or due process, as discussed in this manual at pp. 32, 38.

The Right to Placement in the Least Restrictive Environment

On the basis of the evaluations and the IEP, the IEP team must determine the type of school and program the child will attend.³¹⁵ Every child is entitled to an appropriate program to be implemented in the least restrictive environment (LRE).³¹⁶ LRE means:

- To the maximum extent appropriate, a child with a disability is educated with children who do not have disabilities. This is true not only when the child is

“Special classes, separate schooling or other removal from the general education classroom is allowed only when the nature or severity of the child’s disability makes it impossible to satisfactorily educate the child in the regular classroom...”

educated in-district, but also when the child is placed in a public or private out-of-district school.

- Special classes, separate schooling or other removal from the general education classroom is allowed only when the nature or severity of the child’s disability makes it impossible to satisfactorily educate the child in the regular classroom, even with the use of supplementary aids and services.
- A full continuum of alternative placements is available to meet the needs of children with disabilities.
- Placement is provided as close to home as possible.
- The child must be educated in the school the child would attend if he or she did not have a disability, unless the IEP requires some other arrangement.
- To the maximum extent appropriate, a child with a disability participates with children without disabilities in nonacademic and extracurricular services and programs, such as athletics, recreation, special interest groups and clubs, and lunch and recess periods.³¹⁷ Children in out-of-district placements may need to be returned to the district in order to effectuate such participation.³¹⁸

When deciding LRE for a child, the IEP team must consider the following factors:

- What reasonable efforts the school district can make to accommodate the child in the general classroom with supplementary aids and services.³¹⁹ A child with a disability may not be removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum.³²⁰
- A comparison of the benefits provided in a general classroom and the benefits provided in a special education class.³²¹
- The potentially beneficial and harmful effects which a placement may have on the child or other children in the class.³²²

Continuum of Placements

All children must be considered for placement in the general education class with supplementary aids and services including the following:

- Curricular or instructional modifications or specialized instructional strategies;
- Assistive technology devices and services;
- Teacher aides;
- Related services;
- Integrated therapies;
- Consultation services; and
- In-class resource programs.³²³

Supports will vary from child to child, depending on individual need. Inclusive education requires the creative thinking of the entire IEP team, including the parent and, where appropriate, the child, as well as technical and other support for teachers.

If it is determined that the nature or severity of the child’s disability makes it impossible to satisfactorily educate the child in the general classroom, even with the use of supplementary aids and services, for all or a portion of the day, a full continuum of alternative placements must be made available to meet the needs of the child, including the following:

- Single subject resource programs outside the general education class (“pull-out” resource programs);
- A special class program in the child’s school district (a “self-contained” class);
- A special education program in another school district;
- A special education program in a vocational and technical school;
- A special education program in the following settings:
 - A county special services school district;
 - An educational services commission;
 - A jointure commission; and
 - A New Jersey-approved private school for children with disabilities, or an out-of-state school for children with disabilities.
- A program operated by the State of New Jersey;
- A community rehabilitation program;
- A program in a hospital, convalescent center and other medical institution;
- Individual instruction at home or in other appropriate facilities, with the prior written notice to NJDOE through its county office;
- An accredited nonpublic school which is not specifically approved for the education of children with disabilities;
- Instruction in other appropriate settings; and
- An early intervention program in which the child has been enrolled for the balance of the school year in which the child turns three.³²⁴

The most restrictive choice of placement is home instruction.³²⁵ Under this arrangement, a certified teacher must see the child for a minimum of ten hours per week, three times per week, usually at the child’s home.³²⁶ This type of placement is appropriate only on a temporary basis, and only to children whose needs cannot be met in any kind of school setting, such as a child with a serious medical condition who cannot leave home. Because it is a disfavored placement, the school district is required to provide NJDOE with prior written notification before placing a child on home instruction, and such notification is effective for no more than 60 calendar days, although it may be renewed for an additional 60 days.³²⁷

Regardless of where the child is placed, once the school district agrees to the placement, or an ALJ in a due process hearing orders the placement, the program and all related services must be provided without charge to the parent.³²⁸

Grouping Children by Learning Needs and Age

New Jersey law establishes the following types of special education classes:

- Resource Programs offer individual or small group instruction either in or out of the general education classroom (in-class or pull-out resource programs). A resource program may provide **support instruction**—where the child is taught the general education curriculum for the grade and subject, with modifications to teaching strategies or assessment procedures—or **replacement instruction**—where the general education curriculum is modified to meet the child’s needs.³²⁹
- Special classes are designed to serve children who have similar intensive educational, behavioral and other needs related to their disabilities in accordance with their IEPs.³³⁰ Special class programs must offer instruction in the core curriculum content standards, unless the IEP specifies a modified curriculum due to the nature or severity of the child’s disability.³³¹ Special classes may be operated for children with the following disabilities or needs:

- Auditory Impairments
- Autism
- Behavioral Disabilities
- Cognitive Impairments (mild, moderate or severe)
- Learning and/or Language Disabilities (separate or together, and mild to moderate or severe)
- Multiple Disabilities
- “Preschool Disabilities”
- Visual Impairments³³²

The maximum group sizes for resource programs and special classes are set by state regulations.³³³ For all pull-out resource programs and special classes, there are two maximum group sizes, with more children allowed in the group if the school district adds a paraprofessional or aide to the class.³³⁴ The age span in resource and special class programs cannot be greater than four years for elementary programs³³⁵ and secondary programs.³³⁶ However, a school district may apply to NJDOE for an exception, on an individualized basis, allowing an increase in group size or age range for a period not to exceed the balance of the school year.³³⁷ The parent of the child for whom an exception is requested, and the parents of all children who would be affected by the requested exception, must be informed by the school district that such request is being submitted.³³⁸ Such parents may wish to voice concerns or opposition to NJDOE about the exception.

Placement by Parents in Private Schools and Reimbursement of Costs

In a due process hearing, discussed in this manual at p. 32, an ALJ may order a school district to reimburse a parent for the cost of a private school placement if the ALJ finds that (1) the school district did not offer FAPE in a timely manner prior to the child’s enrollment in the private school, and (2) the child received an appropriate program at the private school.³³⁹ An ALJ may determine a parental placement is appropriate even if the school does not meet the State education standards that apply to school districts.³⁴⁰

In order to be awarded reimbursement at a due process hearing, a parent must prove that he or she gave the school district **advance notice** of the concerns and the intent to enroll the child in private school and seek reimbursement from the school district.³⁴¹ This notice may be given at the last IEP meeting held before the child was removed from the public school, or in writing at least ten business days before the child was removed from the public school.³⁴² If a parent does not give this notice, if he or she refuses to let the school district evaluate the child, or if he or she otherwise acts “unreasonably,” an ALJ or court may deny or reduce a reimbursement request.³⁴³

Even when a parent and school district officials work hard and cooperatively to arrive at an appropriate IEP and placement for a child, there may be disagreements. Disagreements can occur at any stage in the special education process: whether the child should be evaluated, the types of evaluations to be performed, and what assessments should be used; whether the child has a disability, and if so, which disability; which program and related services are needed and in what amounts; which placement is needed in order for the child to learn; and whether a child is making sufficient progress in a program and placement. A parent not only has the right to disagree with school district officials, he or she has the right to do something about it. These rights are called “due process” or “procedural” rights and are discussed below.³⁴⁴

Often times to avoid having to exercise due process rights, a parent may wish to obtain an advocate to help resolve problems. A list of advocacy and information resources helpful to parents can be found in Appendix L of this manual. A parent may also wish to enlist the help of the county offices of NJDOE to assist in resolving problems with the local school district. A list of the NJDOE county supervisors of child study can be found in Appendix M of this manual.

The Right to Notice

A parent must be provided prior written notice of any actions or plans that a school district proposes for his or her child’s education.³⁴⁵ School district officials **must give written notice within 15 calendar days of making a decision about a child, and at least 15 calendar days before implementing a proposed change to the identification, classification, evaluation or educational placement of the child, or the provision of FAPE.**³⁴⁶ They must also give written notice within 20 calendar days, excluding holidays, but not summer vacation, of receipt of a written parental request for action, to let the parent know whether or not they will do what the parent has asked them to do.³⁴⁷ When an IEP team meeting is required to make a decision on a parent’s request for action, the meeting must be held, and a determination made, within 20 calendar days, excluding holidays, but not summer vacation, of the parent’s request, with written notice of the determination provided within 15 calendar days of the meeting.³⁴⁸

All notices must be provided in the language the parent uses, including sign language, or be in the form of communication used by the parent (such as Braille).³⁴⁹ The contents of the notice must be easily understood and not overly technical.³⁵⁰ If a parent has trouble reading, school district officials must help the parent understand the notice.³⁵¹

Each notice must tell the parent what school district officials want to do, or what they refuse to do; the reasons why; a description of the options that were considered and the reasons why those options were rejected; and any assessments, records or evaluations that were used by school district officials to make their decisions.³⁵² The notice must tell the parent that he or she has procedural protections and how to obtain a copy of NJDOE’s pamphlet on procedural safeguards, Parental Rights in Special Education (PRISE).³⁵³ The notice must also provide the names of organizations from which a parent may receive assistance in understanding his or her rights and procedures under the special education laws.³⁵⁴

A school district must give a parent a copy of PRISE when his or her child is referred for an initial evaluation, and at least one time per year thereafter.³⁵⁵ A parent must also be provided a copy of PRISE whenever the parent requests one, whenever a due process hearing is requested, and upon a parent’s first request for a complaint investigation in a given year.³⁵⁶ In addition, the parent of a child with a disability must be given a copy of PRISE on the date a decision is made to initiate a disciplinary removal of a child that constitutes a change in placement.³⁵⁷

A school district must also provide a parent with a copy of the New Jersey administrative

“The parent of a child with a disability has the right to resolve a dispute with a school district through mediation, a due process hearing, or complaint investigation.”

regulations pertaining to special education, N.J.A.C. 6A:14, and the due process hearing rules, N.J.A.C. 1:6A, whenever a determination is made to conduct or not conduct an initial evaluation.³⁵⁸ In addition, upon request by a parent, a school district must provide copies of New Jersey’s special education statute (N.J.S.A. 18A:46-1, et seq.), special education rules (N.J.A.C. 6A:14), student record rules (N.J.A.C. 6A:32) and due process rules (N.J.A.C. 1:6A).³⁵⁹

The Right to Bring Complaints

The parent of a child with a disability has the right to resolve a dispute with a school district through mediation, a due process hearing, or complaint investigation.³⁶⁰ **A parent can request mediation, a due process hearing or complaint investigation regarding any issue relating to identification, evaluation, classification, educational placement, or the provision of FAPE.**³⁶¹ NJDOE has developed forms for requesting each type of complaint resolution procedure. These forms are located in Appendices N and P of this manual.

The Right to “Stay Put” during Mediation or Due Process Hearings

Pending the outcome of mediation, a due process hearing, or any judicial proceeding, no change may be made to the child’s classification, program or placement, unless both parties agree, or emergent relief, discussed in this manual at p. 36, is granted in the course of a due process hearing.³⁶² Therefore, **it is extremely important if a parent wishes to maintain the child’s current classification, IEP or placement during mediation or a due process hearing, that the parent request mediation or a due process hearing in writing within 15 calendar days of receiving the school district’s written notice of any proposed change.** If the parent does not file the request for mediation or a due process hearing within that time, the proposed change in the child’s classification, IEP or placement may go into effect, and the child may have to remain in that placement during the pendency of mediation and due process.

If a school district refuses to maintain a child’s “current” classification, IEP or placement pending mediation or a due process hearing, a parent may request that the child’s stay put rights be enforced by requesting emergent relief.³⁶³ If the request for emergent relief is made in relation to a dispute in mediation or a request for a due process hearing which has not yet been transmitted to OAL, the application for emergent relief should be filed with the Director of the New Jersey Department of Education, Office of Special Education Programs.³⁶⁴ If on the other hand, the application for emergent relief is made after a request for a due process hearing has been transmitted to OAL, the request for emergent relief should be directed to the Clerk of OAL or the ALJ assigned to the case.³⁶⁵

Due Process Hearings

A due process hearing is a formal, trial-like hearing before an ALJ at OAL. The ALJ in a due process hearing listens to, and accepts evidence and legal arguments from both the parent and the school district. Generally, unless an adjournment is granted, the ALJ must issue a formal written decision within 45 days of the conclusion of the “resolution meeting,” discussed in this manual at p. 34.³⁶⁶ That decision must summarize the evidence in the case and explain the reasons for the decision.³⁶⁷ The ALJ’s decision is final and binding on both parties.³⁶⁸ The decision must be implemented without delay,³⁶⁹ unless the parent files an appeal to challenge the decision, in which case “stay put” applies, discussed in this manual at p. 32.³⁷⁰ If a school district fails to implement the decision of an ALJ, the parent may request that NJDOE enforce the decision.³⁷¹ Such a request should be made in writing to the Director of the NJDOE Office of Special Education Programs within 90 days of when the action ordered by the decision was supposed to have occurred.³⁷² The parent and the

school district each have the right to appeal an adverse decision within 90 calendar days to either the New Jersey Superior Court or federal district court.³⁷³

Requesting Due Process Hearings

A parent of a child with a disability may request a due process hearing or an expedited due process hearing (for disciplinary issues) to contest any school district action or inaction relating to identification, evaluation, reevaluation, classification, educational placement, provision of FAPE or disciplinary action.³⁷⁴ A request for a due process hearing, also known as a due process “petition,” must be filed within two years of the date the parent knew or should have known about the alleged action or failure to act complained of in the due process petition.³⁷⁵ The two-year limit may be extended, however, if the school district specifically misrepresented to the parent that the problem complained of was resolved or the school district withheld information that it was required to provide the parent.³⁷⁶

A school district **may** request a due process hearing when it is unable to obtain parental consent to conduct an initial evaluation or reevaluation or to release student records.³⁷⁷ A school district **must** request a due process hearing when it denies a written parental request for an independent evaluation,³⁷⁸ or seeks to remove a child from school on the grounds that the child is dangerous.³⁷⁹ See the discussion of independent evaluations in this manual at p. 17, and the discussion of student discipline at p. 46. A school district may **not** request a due process hearing to implement an initial IEP when a parent has not provided consent to implementation of the initial IEP.³⁸⁰

A due process hearing is requested by writing to the Director, Office of Special Education Programs, New Jersey Department of Education, P.O. Box 500, Trenton, New Jersey 08625-0500.³⁸¹ A parent who requests a due process hearing must send a copy of the request to the school district, and the request must note that a copy of the request was sent to the school district.³⁸² The request, or petition, must include the child’s name, address and date of birth, and the name of the school the child is attending.³⁸³ The petition must also describe the specific issues or problems in dispute, including relevant facts and the relief sought (a proposed resolution of the problem).³⁸⁴ See discussion of due process hearing relief in this manual at p. 37. NJDOE’s forms for requesting a due process hearing or an expedited hearing in a discipline case, discussed below, are in Appendix N of this manual.

Responses to Requests for Due Process Hearings

When a parent requests a due process hearing or an expedited due process hearing (for disciplinary issues), and the school district has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process request, the school district must send a written response to the parent within ten days of receiving the due process hearing request.³⁸⁵ The response must include (1) an explanation of why the school district proposed or refused to take the action complained of, (2) a description of other actions that the IEP team considered and the reasons those options were rejected, (3) a description of each evaluation procedure, assessment, record or report the school district used as the basis for the proposed or refused action; and (4) a description of the factors that are relevant to the school district’s proposed or refused action.³⁸⁶

When a school district requests a due process hearing, the parent must, within ten days of receiving the request for a hearing, send to the school district superintendent or attorney for the school district a response that specifically addresses the issues raised in the school district’s request for due process.³⁸⁷

Sufficiency Petitions

If the party (the parent or school district) against whom the due process hearing

“A parent of a child with a disability may request a due process hearing or an expedited due process hearing (for disciplinary issues) to contest any school district action or inaction relating to identification, evaluation, reevaluation, classification, educational placement, provision of FAPE or disciplinary action.”

“The school district may not include its attorney in the resolution meeting, unless the parent is accompanied by an attorney, and a non-attorney who may accompany the parent is not considered an attorney.”

petition is brought believes that the petition does not adequately set forth the required information (discussed in this manual at p. 33), that party may assert that the petition is “not sufficient.”³⁸⁸ The petition will be considered sufficient unless the party against whom it is filed challenges it by notifying NJDOE and the party who brought the petition in writing, within 15 days of receipt of the petition, that it is not sufficient.³⁸⁹

Any sufficiency challenge will be forwarded to OAL, and, within five days of receiving the written objection, an ALJ will determine whether the notice meets applicable requirements and notify the parties in writing of the determination.³⁹⁰ If the petition is determined to be sufficient, the timelines for the resolution meeting, discussed below, and for the due process hearing, discussed in this manual at p. 32, will continue as if the sufficiency petition had never been filed.³⁹¹ If the petition is determined to be insufficient, the ALJ may dismiss the case and the party who requested the hearing may file a new petition, or the ALJ may allow that party to amend the original petition.³⁹²

Resolution Meetings

When a parent requests a due process hearing or expedited due process hearing, the school district is afforded an opportunity at a “resolution meeting” to resolve the matter before proceeding to a due process hearing, unless both parties agree to participate in mediation instead, see discussion of mediation in this manual at p. 38, or agree in writing to waive the resolution meeting.³⁹³ The parent should indicate on their petition whether they wish to participate in mediation or waive the resolution meeting.³⁹⁴ If both parties agree in writing to waive the resolution meeting, they may proceed directly to a hearing and the matter is transmitted to OAL.³⁹⁵

If the parties do not participate in mediation and do not waive the resolution meeting, the meeting must be held within 15 days of receiving the parents’ request for the hearing (within seven days for an expedited hearing).³⁹⁶ If the issues in dispute are not resolved to the satisfaction of the parents within 30 days of receipt of the request for a hearing (within 15 days for an expedited hearing), NJDOE must transmit the case to OAL for a due process hearing.³⁹⁷

The resolution meeting must include the parents, a representative of the school district who has authority to make decisions on behalf of the school district and relevant members of the child’s IEP team who have specific knowledge of the facts identified in the request for a hearing.³⁹⁸ The school district may not include its attorney in the resolution meeting, unless the parent is accompanied by an attorney,³⁹⁹ and a non-attorney who may accompany the parent is not considered an attorney.⁴⁰⁰ The resolution meeting may not be audio or video recorded by either party unless both parties agree to record it.⁴⁰¹

If an agreement is reached at the resolution meeting, the terms of the agreement must be specified in a written document signed by both parties.⁴⁰² Either party may void or revoke the agreement **in writing** within three business days of signing the agreement.⁴⁰³ If not voided within three business days, the agreement is legally binding and enforceable.⁴⁰⁴ The parties must notify NJDOE, in writing, of the result of the resolution meeting.⁴⁰⁵

If a school district fails to hold the resolution meeting within 15 days of receipt of the parent’s request for a due process hearing, and the parties did not agree to mediate the matter, the parent may request, and an ALJ may order, termination of the resolution period and initiation of due process hearing proceedings.⁴⁰⁶ On the other hand, if the school district is unable after reasonable efforts, which have been documented, to obtain the parent’s participation in the resolution meeting, it may, at the conclusion of the 30-day period, ask that the parent’s request for a due process hearing be dismissed.⁴⁰⁷

Transmittal of Cases to the Office of Administrative Law

Upon expiration of the resolution period, either by receipt from both parties of signed waivers of the resolution meeting, receipt of written notice from the parties indicating that the resolution meeting or mediation was not successful, or the lapse of the 15- or 30-day period without a resolution, unless the parties agree in writing to continue mediation beyond the 15- or 30-day period, NJDOE, must transmit the case to OAL, and a hearing must be scheduled.⁴⁰⁸ In all cases in which a due process hearing is requested, the ALJ must render a final decision within 45 calendar days of the end of the resolution period, unless specific adjournments are granted by the ALJ in response to a request by either party.⁴⁰⁹

Expedited Hearings in Discipline Cases

Due process hearings in student discipline disputes, discussed in this manual at p. 46, are expedited.⁴¹⁰ This means that the resolution period is shorter and the timeframes for conducting a hearing and issuing a decision are faster.⁴¹¹ The resolution meeting, or if requested by both parties, mediation, must be scheduled within seven **calendar** days and completed within 15 **calendar** days of receipt of a request for an expedited hearing.⁴¹² The parties must complete the exchange of relevant records and information at least two **business** days before the hearing.⁴¹³ The hearing must be conducted and completed within 20 **school** days of receipt of the request for an expedited hearing, and the ALJ must issue a final written decision within ten **school** days of the completion of the hearing, without exceptions or extensions.⁴¹⁴ Note, as discussed in this manual at p. 36, a parent could file for an emergent relief hearing in such instances, but emergent relief hearings require parents to bear the heavier burden of showing that the child suffered “irreparable harm,” and it is not clear that such hearings will be scheduled and concluded much faster than the expedited hearings discussed in this Section.

The Right to Discover Evidence Prior to the Due Process Hearing

While a party to a due process hearing does not have the right to the type of formal discovery normally allowed in court cases, such as interrogatories, requests for admissions and depositions of witnesses, parents and school district officials do have important rights related to the disclosure of certain documents and information before the hearing. At least five business days before a due process hearing (and no later than two business days before an expedited hearing),⁴¹⁵ each party must disclose to all other parties any documents, including evaluation reports and recommendations, and a summary of any testimony, that the party intends to introduce at the hearing.⁴¹⁶ The school district and parents also must “to the greatest extent possible” engage in an “informal exchange of questions and answers and other information.”⁴¹⁷ School district officials and parents also have the right to ask the ALJ to exclude any evidence at the hearing that was not disclosed to them at least five business days before the hearing⁴¹⁸ (and at least two business days before an expedited hearing).⁴¹⁹

Burden of Proof at Due Process Hearings

School districts in all due process hearings requested after January 13, 2008 bear the burdens of production and persuasion—referred to collectively as the burden of proof—in New Jersey.⁴²⁰ The burden of production requires a party to be the first party to introduce evidence of the appropriateness of its actions, and the burden of persuasion requires it to prove the appropriateness of its actions, including the appropriateness of the child’s IEP and compliance with IDEA’s requirement of the least restrictive environment.⁴²¹

“School districts in all due process hearings... bear the burdens of production and persuasion... in New Jersey.”

Specific Due Process Hearing Rights

In order to make sure that the due process hearing allows the parent to present his or her side of the disagreement effectively and fairly, the following rights are guaranteed:

- The right to an impartial ALJ to conduct the hearing and make the decision.⁴²²
- The right to have the hearing scheduled at a time and place which is reasonably convenient to the parent.⁴²³
- The right to have a full record of the hearing.⁴²⁴
- The right to have disclosed at least five days before the hearing any documentary evidence and summaries of testimony the school district intends to introduce at the hearing.⁴²⁵
- The right to be accompanied and advised by a lawyer and by individuals with special knowledge or training about children with disabilities.⁴²⁶
- The right to present documents, to call witnesses, and to confront and cross-examine witnesses presented by the school district.⁴²⁷
- The right to prevent the school district from presenting evidence it did not provide at least five days before the hearing unless the ALJ finds that it could not have been disclosed at that time.⁴²⁸
- The right to require any school district official or employee with knowledge of the case to attend the hearing.⁴²⁹
- The right to a written decision, which includes the reasons supporting it,⁴³⁰ not later than 45 days after the expiration of the resolution period (generally 30 days, but see discussion of resolution period in this manual at p. 34), unless a specific adjournment is requested and granted.⁴³¹
- The right to have the decision carried out immediately, even if the school district loses and plans to appeal the decision, unless the school district can persuade a state or federal court judge that implementing the decision may be harmful to the child or other children.⁴³²

Emergent Relief

Emergent relief is available in limited circumstances when a child is suffering or will suffer “irreparable” or serious harm if required to wait until a full hearing before receiving any relief.⁴³³ Emergent relief may be requested as part of a due process (or expedited due process) hearing request by submitting a completed and notarized copy of NJDOE’s Request for Emergent Relief form, located in Appendix O of this manual.⁴³⁴ If a request for a hearing has already been made to NJDOE, and NJDOE has already transmitted it to OAL, a parent may request emergent relief through a written application to the ALJ.⁴³⁵ A parent’s request for emergent relief must be supported by an affidavit or notarized statement setting forth the basis for the request.⁴³⁶ The parent must provide a copy of the request to the school district, and the request for emergent relief must note that the copy was sent.⁴³⁷

A parent is permitted to request emergent relief only under the following limited circumstances: (1) there is a break in the delivery of services to the child; (2) the school district is considering removing, or has removed, the child from his or her current placement for disciplinary reasons; (3) an issue(s) has arisen involving the child’s placement pending the outcome of the due process hearing; or (4) an issue(s) has arisen involving the child’s graduation or participation in graduation ceremonies.⁴³⁸

Before emergent relief will be granted, a parent must prove: (1) the child will suffer irreparable harm if the relief is not granted; (2) the legal right underlying the child’s claim is settled; (3) the child has a likelihood of prevailing on the merits of the underlying claim; and (4) when the interests of the parties are balanced, the child will suffer greater harm

“In a complaint investigation, anyone—not just a parent or school district—may file a complaint with NJDOE requesting an investigation and corrective action plan to remedy violations of federal or state special education laws by a school district or a private educational agency.”

than the school district will suffer if the requested relief is not granted.⁴³⁹ The most common way for a parent to demonstrate irreparable harm to the child is by showing that there has been an interruption or termination of educational services to the child. Because the standards applied to emergent relief applications are stringent, a parent should carefully consider the decision to request emergent relief. An application for emergent relief is most advisable when there is a definite interruption or termination of a child's services or placement and the child's right to the services is clear (for example, when the placement or services are called for in the child's IEP).

Although the regulations appear to permit a parent to seek enforcement of a child's right to "stay put" through an emergent relief application,⁴⁴⁰ a parent is not required to meet the general standards for emergent relief discussed above, as the right to "stay put" is automatic, regardless of the merits of the child's underlying claim.⁴⁴¹ The only issues in an application for emergent relief seeking to enforce a child's right to "stay put" pending a hearing should be what the child's current placement was when the request for a hearing was made and whether that placement is being implemented.⁴⁴²

Due Process Hearing Relief

A due process hearing provides a parent an opportunity not only to complain about what the school district has done wrong, but also to have the school district's action corrected and to have the harm caused to his or her child remedied. It is important, therefore, that a parent who chooses due process carefully consider the range of available remedies, and specifically request the remedies he or she wants in the application for due process.

IDEA provides that a court may "grant such relief as [it] determines is appropriate,"⁴⁴³ but also requires that, in most cases, the parties first seek relief through an administrative due process hearing.⁴⁴⁴ In most cases, in determining whether a child was denied FAPE, the ALJ must review the evidence presented regarding the appropriateness of the evaluations, services and placement provided the child.⁴⁴⁵ However, the ALJ may also determine that there was a denial of FAPE based on a school district's failure to comply with special education procedural requirements if the ALJ determines that the failure: (1) impeded the child's right to FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) caused a deprivation of educational benefits.⁴⁴⁶

For denials of FAPE, ALJs in New Jersey have awarded a broad scope of relief including: (1) prospective relief, such as orders identifying a child as one with a disability, amending an IEP to provide particular services to a child, or changing an educational placement; (2) compensatory education to make up for education lost when FAPE was denied; and (3) reimbursement of costs incurred by parents (see, for example, Placement by Parent in a Private School, discussed in this manual at p. 30).

The standard for when a child is entitled to compensatory education has been established for this part of the country by the United States Court of Appeals for the Third Circuit which held that "a school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimus* educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem."⁴⁴⁷

Compensatory education can be provided during times when a child would otherwise not be receiving services under his or her IEP such as during the summer or after school for a child who is not eligible for an extended school year, discussed in this manual at p. 42, or by extending a child's eligibility for special education beyond the age of 21. Compensatory education can also be provided by increasing the intensity of services to a child under an IEP.

It has generally been recognized that ALJs do not have the authority to award monetary damages and attorney's fees in due process hearings. However, the Third Circuit Court of Appeals has ruled that monetary damages in egregious IDEA cases may be sought through court.⁴⁴⁸ See *Taking Cases to Court*, discussed in this manual at p. 40. Parents may also file for reimbursement of attorney's fees in court if a school district refuses to pay those fees once a parent has prevailed at a due process hearing.⁴⁴⁹ See *Hiring an Attorney and Experts for Mediation, Due Process or Court*, discussed in this manual at p. 40.

Mediation

A parent has the option of first trying to resolve disputes through less formal mediation procedures before requesting a due process hearing.⁴⁵⁰ In addition, NJDOE must offer mediation whenever a parent requests a due process hearing,⁴⁵¹ and, as discussed in this manual at p. 34, the parties may agree to participate in mediation in place of a resolution meeting.⁴⁵² Mediation must be voluntary on the part of the parent and school district, although a school district may require a parent who chooses not to use the mediation process to meet with a state mediator to discuss the benefits of mediation.⁴⁵³ The State must bear the full cost of mediation, and a qualified and impartial mediator who is trained in effective mediation techniques must conduct the mediation.⁴⁵⁴

A request for mediation is made in the same manner, and on the same form, as a request for due process. Due process is discussed in this manual at p. 32.⁴⁵⁵

A mediation conference must be scheduled by NJDOE within 15 calendar days of receipt of the written request and completed within 30 days.⁴⁵⁶ Mediation must be held at a time and place convenient to all parties.⁴⁵⁷ The mediator, who is paid by NJDOE but not employed by NJDOE or the school district involved in the dispute, does not reach a decision in the dispute, but rather assists the parties, in an impartial manner, in identifying issues, exploring options for resolution and, if possible, reaching an agreement.⁴⁵⁸ At the request of the parties, the mediator may adjourn the mediation for not more than 45 days to obtain additional information or explore settlement options.⁴⁵⁹

If the mediation results in an agreement between the parties, the mediator will set forth the agreement in writing and the parent and school district officials will sign it.⁴⁶⁰ If the mediation does not result in an agreement, the mediator will simply document the date and the participants in the meeting.⁴⁶¹ No other record of the mediation will be made, and any discussion that occurred during the mediation is confidential and may not be used as evidence in any subsequent due process or court proceeding.⁴⁶²

As mentioned above, and discussed in this manual at p. 34, the parties may agree to participate in mediation in place of a resolution meeting.⁴⁶³ For an expedited hearing, the mediation in lieu of resolution meeting must be scheduled within seven days, and completed within 15 days, of the hearing request.⁴⁶⁴ Unless the parties reach an agreement or advise NJDOE that they agree to continue mediation beyond the resolution period, discussed in this manual at p. 34, the matter will be transmitted for a due process hearing or expedited due process hearing either after the parties agree in writing that no agreement is possible, or after expiration of the applicable mediation time period (30 days for a due process hearing and 15 days for an expedited hearing).⁴⁶⁵

Enforcement of Mediation Agreements and Due Process Hearing Decisions

Signed mediation agreements and ALJ decisions are legally binding on the parties.⁴⁶⁶ If either party fails to comply with any provision of the mediation agreement or ALJ decision, the other party may seek enforcement of the agreement in state or federal court.⁴⁶⁷ If the parent believes the mediation agreement or ALJ's decision is not being implemented, the parent may request enforcement of the agreement or decision by NJDOE.⁴⁶⁸ The request

must be filed no later than the 90th calendar day from the date that the action required by the mediation agreement or ALJ decision was to have occurred.⁴⁶⁹ A request to NJDOE for enforcement of a mediation agreement or an ALJ decision must be made in writing.⁴⁷⁰ Upon receipt of the request, NJDOE must make a determination regarding the implementation of the agreement or decision.⁴⁷¹ If NJDOE determines that the school district failed to implement the agreement or decision or part of the agreement or decision, NJDOE must order the school district to implement the agreement or decision or any part of the agreement or decision.⁴⁷² The forms to request NJDOE enforcement of mediation agreements can be found in Appendix Q of this manual. The forms to request NJDOE enforcement of due process hearing decisions can be found in Appendix R of this manual.

Complaint Investigations

IDEA also provides a complaint resolution procedure known as “complaint investigation.”⁴⁷³ In a complaint investigation, anyone—not just a parent or school district—may file a complaint with NJDOE requesting an investigation and corrective action plan to remedy violations of federal or state special education laws by a school district or a private educational agency.⁴⁷⁴ The complaint must set forth the complete factual basis for the alleged violation.⁴⁷⁵ The complaint must also set forth the time period when the alleged violation occurred, which must be not more than one year prior to the date that the complaint is filed.⁴⁷⁶ A signed complaint must be filed with the Director, Office of Special Education Programs, New Jersey Department of Education, PO Box 500, Trenton, New Jersey 08625-0500. NJDOE’s form for requesting a complaint investigation is in Appendix P of this manual.

If the written complaint contains issues that are also the subject of a due process hearing, NJDOE must set aside those issues until the conclusion of the due process hearing.⁴⁷⁷ Further, if an issue raised in a complaint was previously decided in a due process hearing involving the same parties, NJDOE must inform the complainant that the hearing decision is binding.⁴⁷⁸ In all other cases, NJDOE must conduct an independent investigation of the complaint.⁴⁷⁹ The investigation must be conducted on-site, if necessary, and include the review of all relevant information, such as the school district’s policies and procedures, student records, observation of programs and interview of parents, teachers and other school staff.⁴⁸⁰ NJDOE must grant the complaining party the opportunity to submit additional information.⁴⁸¹

NJDOE must complete its investigation within 60 days of receipt of the signed complaint, although it may grant itself an extension if “exceptional circumstances” exist.⁴⁸² A report of NJDOE’s findings, conclusions and, in the event the school district is found to be in noncompliance with the law, the corrective actions required, must be sent to the complaining party and the school district.⁴⁸³ NJDOE’s written investigation report must address each allegation in the complaint.⁴⁸⁴ Additionally, NJDOE’s report must address how the school district can compensate any child denied services by the school district, and how the school district can provide appropriate services in the future for all children with disabilities.⁴⁸⁵

A proposed corrective action plan must be developed by any school district or private educational agency found to be in noncompliance with the law.⁴⁸⁶ The plan, which is submitted to NJDOE through the county office of education, must include, at a minimum, objectives and strategies for correcting the noncompliance, including resources needed to obtain the objectives, and the dates by which the noncompliance will be corrected.⁴⁸⁷ NJDOE must offer the school district technical assistance in correcting problems.⁴⁸⁸

There is no discussion in either federal or state IDEA regulations regarding appeals of complaint investigations, and the Superior Court of New Jersey, Appellate Division, has ruled

that NJDOE special education complaint determinations cannot be appealed to the NJDOE Commissioner.⁴⁸⁹ However, the United States Department of Education has issued guidance advising that a complaint investigation may be appealed by requesting a due process hearing.⁴⁹⁰ The timeframe by which such an administrative appeal must be filed is not discussed in the federal guidance, however, it is presumably the same two-year timeframe allotted for filing any administrative complaints, with the two-year timeframe starting to run from the date of the action complained of.

Taking Cases to Court

A parent who is unhappy with the result of a due process hearing or complaint investigation, or who is seeking relief not available through administrative proceedings, such as monetary damages or attorney's fees, has the right to file a case in state or federal court.⁴⁹¹ An appeal of an ALJ's final decision in a due process hearing or expedited due process hearing must be filed within 90 days of the date the final decision was issued.⁴⁹²

Hiring Attorneys and Experts for Mediation, Due Process Hearings or Court Proceedings

While most parents are capable of presenting their concerns about their children at a mediation conference, in many if not most cases, parents who can, should hire an attorney experienced in special education law for representation in a due process hearing. An attorney will represent the school district, and an unrepresented parent may have difficulty meeting the legal and procedural requirements of the special education laws. A parent has the right to be reimbursed by the school district for at least some of his or her attorney's fees and costs if he or she obtains relief on a significant issue at a hearing.⁴⁹³

As important as, if not more important than, representation by a knowledgeable attorney, can be expert testimony supporting the parent's position at a due process hearing. Judges will usually rely heavily on expert testimony in deciding the appropriateness of a child's evaluation, classification, educational program and placement, so, if at all possible, the parent should arrange to present the testimony of relevant expert(s) at the hearing. Unfortunately, while a parent may be able to recover the costs of an "expert" who performs an independent evaluation if the school district's evaluation is determined to be inappropriate, a parent cannot be reimbursed for the costs of expert testimony.

If "good cause" exists, a parent can ask an ALJ to order an independent evaluation as part of a due process hearing.⁴⁹⁴ If the judge agrees that an independent evaluation is warranted, it will be ordered at no cost to the parent.⁴⁹⁵ Upon the request of a party, the judge may adjourn the hearing until the independent evaluation is completed.⁴⁹⁶

Free and appropriate preschool programs must be provided to all children between the ages of three and five who have disabilities or developmental delays.⁴⁹⁷ Most of the rules that apply to school-age children apply to preschoolers. For example, preschool children have the right to FAPE in the least restrictive environment. Parents of preschoolers who need or are thought to need special education services have the same rights to receive written notices and to use the mediation and due process procedures available to parents of school-age children.

Aside from the requirement that a speech-language specialist participate as a fourth member of the child study team to determine whether an evaluation is warranted, and, if so, the nature and scope of the initial evaluation for all preschoolers.⁴⁹⁸ See discussion of evaluation procedures in this manual at p. 12, the evaluation, eligibility and IEP processes for preschoolers are the same as those for school-age children. For example, a parent has the right to participate as a member of the IEP team, and development and implementation of the IEP must occur within 90 days of parental consent to evaluate. In order to ensure that a program is in place by the age of three, the referral and evaluation process should begin at least 120 days before the child's third birthday.⁴⁹⁹

Because the law requires that preschoolers, just like school-age children, receive their education together with children without disabilities to the maximum extent appropriate, the vast majority of preschoolers with disabilities should be placed in inclusive preschool programs. A school district may meet its obligation to provide inclusive preschool services by placing a child in either a district-run or private, community-based preschool program.⁵⁰⁰ Some school districts choose to create a preschool program that is open to the general public on a lottery basis, and available to children with disabilities on an as-needed basis. If a school district chooses to place a child in a private preschool program, it must be a non-sectarian, licensed and approved early childhood program, capable of implementing the child's IEP with appropriately certified and/or licensed personnel, or approved paraprofessionals.⁵⁰¹

New Jersey urban school districts that have been designated as *Abbott* school districts are required to provide "high quality" preschool education to all three and four year old children residing in the district.⁵⁰² Children with disabilities must be included in these *Abbott* preschool programs, as in any other district preschool programs, to the maximum extent appropriate.

A school district should not meet its obligation to provide inclusive preschool education by reserving a few spaces for non-disabled children in a program primarily for preschool children with disabilities — a process known as "reverse mainstreaming." The percentage of children in the program with and without disabilities should be in natural proportion to the general school-age population.

If a school district does not have a public preschool program, or if the percentage of children with disabilities in the school district's program would exceed natural proportions, a school district may meet its obligation to provide inclusive education by placing a child in a private preschool program.⁵⁰³ The private program must be a non-sectarian, licensed and approved early childhood program, capable of implementing the child's IEP with appropriately certified and/or licensed personnel, or approved paraprofessionals.⁵⁰⁴ An additional option for a preschool-age child participating in an early intervention program, discussed in this manual at p. 55, is for the child to remain in that program for the balance of the school year in which he or she turns three.

As with school-age children, the type, amount and location of special education services for preschool children must be based on the child's individual needs.

“Assistive technology devices and services must be provided by the school district whenever the technology is necessary for the student to make meaningful educational progress, or to ensure a student’s placement in the least restrictive environment.”

Extended School Year (ESY) programs are special education programs provided to children during the summer vacation months, during other school vacations, on weekends or after the regular school day.⁵⁰⁵ The IEP team is responsible for making an individualized determination as to whether a child needs ESY services in order to receive FAPE, and the IEP team must consider all relevant factors such as the degree of the child’s impairment; the degree of regression suffered by the child during interruptions in educational programming and the recovery time from this regression; the child’s rate of progress; the child’s behavioral and physical problems; the availability of alternative resources; the ability of the child to interact with non-disabled children; the areas of the child’s curriculum which require continuous attention; the child’s vocational needs; and whether the requested service is extraordinary to the child’s condition, as opposed to a necessary part of a program for those with the child’s condition.⁵⁰⁶

ASSISTIVE TECHNOLOGY

IDEA requires that the IEP team consider the need for assistive technology devices and services for each child.⁵⁰⁷ If the IEP team determines that the child needs an assistive technology device or service, the IEP goals and objectives should address this need,⁵⁰⁸ and the needed assistive technology device or service must be included in the IEP as part of the child’s special education, related services or supplementary aids and services.⁵⁰⁹ Assistive technology devices and services must be provided by the school district whenever the technology is necessary for the child to make meaningful educational progress,⁵¹⁰ or to ensure a child’s placement in the least restrictive environment.⁵¹¹

An assistive technology device is any item used to maintain, increase or improve the functional capabilities (what the child is capable of doing) of a child with a disability.⁵¹² An assistive technology service is any service that assists in the selection, acquisition or use of an assistive technology device, including evaluations, modifications, maintenance and repair of assistive technology devices, as well as training for the child, family and school district personnel to use such devices.⁵¹³ Frequently used assistive technology devices include computers, augmentative communication devices, wheelchairs and bus adaptations.

When assistive technology is considered by the IEP team, but further documentation is needed to determine whether the device would provide educational benefit to the child, the IEP team must arrange for an evaluation by a qualified person.⁵¹⁴ If the parent disagrees with the results of the evaluation arranged by the school district, he or she may request an independent evaluation, discussed in this manual at pp. 17, 18.

A school district may request that a parent use Medicaid or private insurance coverage to pay for assistive technology devices and services.⁵¹⁵ However, a parent’s decision to use these resources is voluntary, and if a parent declines to use Medicaid or private insurance, the school district remains responsible for payment.⁵¹⁶ Assistive technology devices purchased by the school district are owned by the school, but may be used by the child outside of school if necessary to accomplish the goals and objectives of the IEP.⁵¹⁷

New Jersey Assistive Technology Advocacy Center (ATAC) is a program that assists individuals with disabilities in getting assistive technology devices and services. ATAC offers information, referral and advocacy services. The phone number for ATAC is 800-922-7233 (toll free), 609-292-9742 (voice) or 609-633-7106 (TDD).

One of IDEA's primary purposes is to prepare children with disabilities for postsecondary education, employment and independent living.⁵¹⁸ Starting with the IEP that will be in place when the child turns 14, or earlier where appropriate, IDEA sets forth numerous obligations for the school district to provide transition planning and services. The IEP must describe, consistent with the child's strengths, interests and preferences, a course of study and related strategies and activities designed to assist the child in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living.⁵¹⁹ The evaluations must include an assessment(s) to determine appropriate postsecondary outcomes for that child.⁵²⁰ In addition, all children must be invited to their IEP meetings.⁵²¹ The school district's notice to the parent advising him or her of the IEP meeting must state that a purpose of the meeting will be to consider and develop needed transition services.⁵²² The IEP must also, as appropriate, describe the child's need for consultation from other agencies that provide services for individuals with disabilities, including the New Jersey Division of Vocational Rehabilitation Services (DVRS), the New Jersey Commission for the Blind and Visually Impaired (CBVI) and the New Jersey Division of Developmental Disabilities (DDD), and identify needed interagency linkages and responsibilities.⁵²³ This part of the IEP, generally referred to as the child's "transition plan," must be updated annually.⁵²⁴

Starting with the IEP that will be in place when the child turns 16, or earlier where appropriate, the IEP must add to the information mentioned above appropriate measurable postsecondary goals and "transition services" (including courses of study) needed to assist the child in reaching those goals.⁵²⁵ Postsecondary goals must be based upon age-appropriate transition assessments and related to training, education, employment and, if appropriate, independent living.⁵²⁶ Transition services are a coordinated set of activities, designed within a results-oriented process, focused on improving the academic and functional achievement of the child to facilitate his or her 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 and community participation.⁵²⁷ Like other elements of the IEP, transition services must be based upon the individualized needs of the child, taking into account the child's up-to-date strengths, preferences and interests.⁵²⁸ Transition services must include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, the acquisition of daily living skills and a functional vocational evaluation.⁵²⁹ The child study team case manager is responsible for transition planning.⁵³⁰

If the child does not attend the IEP meeting where transition services are discussed, the IEP team must take steps to ensure that the child's preferences and interests are considered in the development of the transition plan.⁵³¹

An important component of transition planning and services is the interagency connections necessary to prepare a child to leave school. The school district must invite to the IEP meeting a representative of any public agency likely to be responsible for transition, such as DVRS.⁵³² A child is eligible for DVRS services if he or she: (1) has a physical or mental impairment; (2) such impairment constitutes a substantial impediment to employment; and (3) DVRS services can benefit the child with respect to an employment outcome, which is defined as including part-time employment and supported employment.⁵³³ A child even younger than 14 may qualify for DVRS services.⁵³⁴ A parent should not accept a statement from DVRS that services cannot be provided because its case load is full or because a child's disability is, in its opinion, "too severe."

Children who are eligible for the services of DDD can link with DDD for adult living support services, and DDD should be invited to the IEP meeting. If a representative from

"An important component of transition planning and services is the interagency connections necessary to prepare a student to leave school."

DVRS, DDD or another appropriate public agency does not come to the IEP meeting, the school district must take other steps to obtain the participation of the agency in planning the transition services.⁵³⁵ If DVRS, DDD or another participating agency fails to provide agreed-upon services contained in the child's IEP, the school district must convene a meeting to identify other strategies to meet the transition goals.⁵³⁶

THE RIGHTS OF ADULT STUDENTS

An “adult student” is a student who is 18 years old or older and who is not under legal guardianship.⁵³⁷ Beginning at least three years before the student's 18th birthday, the student and the student's parent must be notified of the rights afforded under special education laws which will transfer to the student from his or her parents upon reaching the age of majority (age 18).⁵³⁸ Upon turning 18, all rights under special education laws transfer to the adult student who must receive a copy of the state regulations and the procedural safeguards statement (PRISE).⁵³⁹ Thereafter, the school district must send all notices regarding any action or meeting to the adult student, and must invite the student to participate as a member of the IEP team.⁵⁴⁰ The adult student has the right to invoke all of the procedural protections previously granted to parents, such as the right to request mediation or due process.⁵⁴¹

THE RIGHT TO SEE AND COPY SCHOOL RECORDS

A parent has the right to see **all** records kept by the school district concerning his or her child, except notes made by a teacher or another school district employee for his or her use only.⁵⁴² A sample letter requesting school records can be found in Appendix S of this manual. A parent may read the records, take notes on what they contain and have copies made.⁵⁴³ The school district may charge a reasonable fee for copies of student records, unless the parent is unable to pay the fee, or the fee would effectively prevent the parent from inspecting and reviewing the records, in which case the school district must give the parent the records without charge.⁵⁴⁴ (As discussed in this manual at p.p. 14, 15, the school district is obligated to provide a parent with a copy of special education evaluation reports, and this obligation is independent of whether or not the parent requests those records.)

The school district must let a parent see the records without any “unnecessary delay” and in any event within ten days from the date of the parent's request to see them.⁵⁴⁵ The parent of a child with a disability must also be permitted to inspect and review the child's general and special education records before any scheduled IEP meeting, resolution session or due process hearing.⁵⁴⁶ The parent's right to inspect and review the records also includes the right to a reasonable explanation and interpretation of information in the child's student records and the right of the parent's representative to also review and inspect the child's student records.⁵⁴⁷

Someone from the school district must be present when the parent looks at the records to help interpret them for the parent and to prevent any damage to the records.⁵⁴⁸ If the parent is deaf or does not speak English, a school district employee must translate the documents or help find an interpreter.⁵⁴⁹

The only kind of information that a school district may keep on a child is that which is related to a child's education.⁵⁵⁰ If a teacher or another school district employee enters

comments about a child in the file, those comments must be based on the person's own knowledge or observation, rather than on hearsay or suspicion, and must be signed and dated by the person who made them.⁵⁵¹ If a parent finds that there is information in a child's records which does not meet these requirements or is not accurate or complete, he or she may ask the school principal to correct or expunge those records.⁵⁵² If the principal refuses, a parent may appeal further by writing a letter to the school district superintendent explaining the details of the disagreement.⁵⁵³ The superintendent must then make a decision and respond to the parent in writing within ten days about whether the records will be changed.⁵⁵⁴ If the superintendent does not agree with the parent, he or she must meet with the parent.⁵⁵⁵ If the parent is not satisfied with the superintendent's decision, he or she may appeal through the mediation and due process procedures.⁵⁵⁶ In any case, a parent has the right to have placed in the child's file, additional data, as well as "reasonable comments" regarding the meaning of the records or explaining why he or she believes the records are inaccurate.⁵⁵⁷

Each school district is obligated to maintain the confidentiality of all student records.⁵⁵⁸ With a few exceptions, only those providing educational services may see a child's records without the parent's written permission.⁵⁵⁹ The only exceptions are for staff members of accrediting organizations, NJDOE, state protective services agencies, researchers approved by the chief school administrator, or persons with a court order if the parent is given three days advance notice.⁵⁶⁰ In any of these cases, a record must be kept in the child's file containing the name and title of the person who was shown the records, the time and place, the reason and the purpose for which the information will be used.⁵⁶¹

Once a child graduates, the school district is required to keep certain basic information as a permanent record; other information in a child's records, including all child study team evaluations and IEPs, may be destroyed, but only after written notice has been given to, and written permission has been given by, the adult student or parent, or after reasonable attempts to provide such notification and to secure such permission have been unsuccessful.⁵⁶²

If a child has been placed in a private school by the school district, all rights concerning the child's records are the same as if the child attended public school.⁵⁶³ All requests to see, change, or destroy records must be made to the superintendent of the child's school district.⁵⁶⁴

THE RIGHTS OF CHILDREN WHOSE PARENTS ARE UNKNOWN OR UNAVAILABLE

The special education system depends, to a large extent, on active parental participation. Recognizing that many children reside in nontraditional families, the term "parent" is defined broadly. A "parent" for special education purposes includes: (1) a natural or adoptive parent of a child; (2) a legal guardian, but not the state if the child is a ward of the state, generally authorized to act as the child's parent or authorized to make educational decisions for the child; (3) a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives; (4) a person who is legally responsible for the child's welfare; (5) a foster parent, if the school district cannot ascertain the whereabouts of the parent and the foster parent is willing to make the educational decisions required in the special education system; or (6) a surrogate parent as defined below.⁵⁶⁵

If a school district determines that the parents of a child who has (or is thought to have) a disability are no longer living, or the parents' rights have been legally terminated by a court, or the parents cannot be identified or located with reasonable efforts, or the child is an "unaccompanied homeless youth," within 30 days, the school district must appoint and train an adult to serve as the child's "parent" throughout the special education process.⁵⁶⁶ This adult, called the "surrogate parent," may exercise all the rights of a parent related to the

“If school district officials believe that a child’s program or placement is not appropriate because of behavioral or discipline problems, their first response should be to work with the IEP team, including the parents, to review, and if appropriate, revise the child’s program or placement, to ensure that it meets the needs of the child without disrupting the learning environment for other children.”

identification, evaluation and educational program and placement of the child.⁵⁶⁷ A person appointed as a surrogate parent may not work for the school district and must not have any conflicts of interest that would interfere with his or her ability to be a strong advocate for the child.⁵⁶⁸ The person appointed by the school district must have knowledge and skills necessary to represent the child and may not be replaced without cause.⁵⁶⁹ If a school district fails to appoint a surrogate parent for a child with a disability who is a ward of the State, a judge may appoint a surrogate parent if the judge determines that a surrogate parent is necessary.⁵⁷⁰

THE RIGHT TO BE FREE FROM UNWANTED MEDICATION

A school district may not require a child to obtain a prescription for medication as a condition of attending school, receiving an evaluation for special education eligibility or receiving special education services.⁵⁷¹ This does not mean that a teacher or child study team member may never provide information to parents about the potential benefits of medication or recommend that a child be assessed to determine the need for medication, but a teacher or other school official may not condition the receipt of educational services upon the medication of a child, or otherwise place undue pressure upon parents to medicate their children. Decisions with respect to a child’s evaluation, eligibility for services, IEP and placement should be made on the child’s academic and functional needs, not on whether or not the child has a prescription for medication.

THE RIGHT TO POSITIVE BEHAVIORAL INTERVENTIONS AND STRATEGIES, AND SPECIAL PROTECTIONS IN SCHOOL DISCIPLINE AND BEHAVIOR PROGRAMS

Children who are eligible for special education services are entitled to special procedures related to student behavior and school discipline. As discussed below, services and procedures required under IDEA are designed to ensure that (1) challenging behaviors are addressed through positive behavioral interventions, (2) children are not improperly disciplined for conduct related to their disabilities, and (3) children with disabilities receive FAPE even if properly excluded from school for disciplinary reasons.

School districts must also comply with general due process procedures and standards that apply to all children who engage in misconduct.⁵⁷² These general education due process procedures and standards are set forth in New Jersey’s Student Conduct regulations.⁵⁷³ The regulations set forth basic requirements applicable to all children subject to discipline, as well as some additional protections for children with disabilities which exceed those available under federal law. At a minimum, due process requires in all cases of a long-term suspension—a suspension of more than ten consecutive school days—prior written notice and a full hearing before the school district board of education in which the student may contest the facts that led to the suspension and challenge the recommended disciplinary action.⁵⁷⁴ The due process protections available to all children in the context of student discipline are discussed in detail in ELC’s manual, “Student Discipline Rights and Procedures: A Guide for Advocates,” a copy of which can be obtained by calling or writing ELC or visiting ELC’s website at www.edlawcenter.org.

The rules related to special education discipline are very complex. Unfortunately, this complexity often leads school districts to discipline children without following the rules.

It is, therefore, very important that parents and advocates learn and understand these rules, and demand their school district's full compliance. These rules apply to all situations in which a school district bars a child from attending school or participating in his or her current education program due to an alleged violation of school rules or behavioral problems, even if the school does not call the action a "suspension" or "expulsion."

Preschool Children with Disabilities May Not Be Suspended

Children with disabilities in preschool may never be suspended or expelled from school.⁵⁷⁵

School Districts' Obligations to Use Positive Strategies to Address Challenging Behaviors

Whenever the behavior of a child with a disability interferes with the learning of the child or others, the child's IEP team must consider for inclusion in the child's IEP "positive behavioral interventions and supports" and "other strategies" (which are often described in a "behavioral intervention plan") to address that behavior.⁵⁷⁶ A child with a disability must be re-evaluated whenever the child's functional performance, including behavior, warrants a reevaluation.⁵⁷⁷ Any evaluation of the child must assess all areas of suspected disability, including social and emotional status, and identify all special education and related service needs, even if not commonly linked to the category under which the child is classified.⁵⁷⁸ Such evaluations should assist the IEP team in determining what services or accommodations are necessary to enable the child to be educated with his or her non-disabled peers,⁵⁷⁹ and, where appropriate, must include a "functional behavioral assessment."⁵⁸⁰ Evaluation reports must appraise the child's current functioning, analyze the instructional implications of that appraisal and include a statement regarding the relationship between the child's behavior and academic functioning.⁵⁸¹

In addition to positive strategies and interventions, the IEP should include any modifications to the Code of Student Conduct which are necessary for the student.⁵⁸²

Functional Behavioral Assessments and Behavioral Intervention Plans

The purpose of a "functional behavioral assessment" (FBA) is to understand the causes of a child's challenging behavior in order to assist the IEP team in developing "positive behavioral interventions and supports" to address that behavior. The first step in understanding the behavior is to objectively and accurately describe the behavior and the social and environmental context in which it occurs. This description must be based on a systematic collection of information from observations and interviews. For example, if the concern is aggressive behavior, it will be important to know what form the behavior takes, when and where the behavior occurs and whether any environmental factors typically precede the behavior. Once there is an accurate description of the behavior and the context in which it occurs, a hypothesis or understanding of the causes and function of the behavior for the child can be developed. The hypothesis statement should include a description of the specific setting event and the "triggers" that precede the behavior, an operational and measurable definition of the behavior, and the function of the behavior. An example of a behavior's function is a child using an inappropriate behavior to communicate frustration.

The FBA is generally conducted in a collaborative fashion, bringing together input from the child and a variety of individuals who work and interact with the child. It uses a child-centered approach based on the understanding that behavior serves a particular function for each child and that effective interventions must be tailored to address the function played by the behavior within the context in which the individual child lives and learns and in light of the child's unique strengths and needs. An FBA should be conducted by a professional who can demonstrate (e.g., through a specialized degree or credential) experience, knowledge and skill in positive behavior support, which includes training in applied behavior analysis.

Once the FBA is complete, the IEP team will develop a “behavioral intervention plan” (BIP) for the child, which will include positive strategies to address the behavior. The BIP can include a variety of program accommodations, modifications, supports and services to improve the child’s behavior. The BIP should be designed to accomplish four outcomes: (a) improve environmental conditions to prevent problem behaviors; (b) teach the student new skills to enable the student to achieve the same function in a socially appropriate manner; (c) reinforce desired behaviors, including newly-taught replacement skills; and (d) use strategies to defuse problem behavior effectively and in ways that preserves the student’s dignity. For example, for a child who runs out of class to avoid frustration, a plan might use a combination of strategies to reduce or eliminate environmental factors that cause frustration and help the child to learn or use different behaviors to communicate when frustrated.

Changes in Placement in Response to Challenging Behaviors

If school district officials believe that a child’s program or placement is not appropriate because of behavioral or discipline problems, their first response should be to work with the IEP team, including the parents, to review, and if appropriate, revise the child’s program or placement, to ensure that it meets the needs of the child without disrupting the learning environment for other children. If the child’s parent does not agree to the program or placement changes proposed by the school district, he or she can contest the changes through mediation or due process. As in all other situations where there is a dispute between the school district and parent, as set forth in this manual at p. 32, there can be no change in the classification, IEP, or placement of the child during the pendency of mediation or due process, provided the parental request for mediation or due process is made in writing within 15 calendar days of the school district’s written notice of a proposed action. This is referred to as the child’s right to “stay put” during the pendency of a dispute. The child’s placement may change during the pendency of mediation or due process only if the parent and school district agree to a change, or an ALJ orders a change.

Often, school districts will circumvent the special education and general education due process rights of children with disabilities who engage in challenging behavior or violate a school district’s code of student conduct by coercing a parent to consent to a change of placement to home instruction. Schools will tell a parent that if the parent does not consent to home instruction, the child will be “expelled” from school for an indefinite or extensive period of time. However, parents should know that, in no case, under IDEA, can a school district discontinue educational services to a child with a disability for more than ten school days in a given school year.⁵⁸³ Moreover, under State Student Conduct regulations, whenever a child with a disability is suspended from school for more than five consecutive school days, the child must be provided educational services that afford the child FAPE and are consistent with the child’s IEP.⁵⁸⁴ In addition, whenever a child with a disability is suspended for more than ten consecutive school days, educational services must be provided in an “interim alternative educational setting.”⁵⁸⁵ Consequently, a parent should never feel the need to consent to placement of a child on home instruction for fear that challenging the student’s suspension or expulsion from school might lead to the complete discontinuation of educational services to the child.

School District Authority to Exercise Discretion when Disciplining Children with Disabilities

School district officials always retain the authority to consider on a case-by-case basis any unique circumstances when determining whether or not it is appropriate to impose a disciplinary action or order a change of placement for a child with a disability who has violated a school district code of conduct.⁵⁸⁶ This is true for any disciplinary action being

considered, even if school district officials claim they do not have discretion under so called “zero tolerance” policies, including those mandated by State law.⁵⁸⁷

Notification of Suspensions to Parents and Case Managers

On the date on which a decision to suspend a child is made, the school district must notify the parents of the decision, and of all IDEA procedural safeguards, by providing the parents with a copy of PRISE.⁵⁸⁸ In addition, at the time the child is being removed, the school principal is required to provide a written statement of the reasons for the suspension to the child’s parents and case manager.⁵⁸⁹

School Discipline Must be Consistent with the Children’s IEPs

A school district’s code of student conduct must be implemented in accordance with a child’s IEP.⁵⁹⁰ Consequently, it is very important for the IEP of a child with behavioral problems to, as discussed in this manual at p. 47, address the behavior through positive behavioral interventions and set forth to what extent the child might require an accommodation in the school district’s general code of student conduct. For example, for some children, suspension from school without services even for one or two days might never be appropriate.

Procedures and Services for Short-Term Suspensions

Unless otherwise specified in a child’s IEP, school district officials may suspend a child with a disability for up to ten consecutive school days, just as they would suspend a nondisabled child, under general standards and procedures applicable to short-term suspensions, without following special discipline procedures that apply to longer suspensions, so long as the suspension does not constitute a “change in placement”⁵⁹¹ (see discussion of change in placement below).

In New Jersey, all children, including children with disabilities, are entitled to receive educational services within five school days of any suspension.⁵⁹² These educational services must include academic instruction that addresses New Jersey’s Core Curriculum Content Standards, and, for a child with a disability, the services must be provided in a manner consistent with the child’s IEP.⁵⁹³ The services may be provided through an “alternative education program” or “home or out-of-school instruction” which meet, respectively, criteria set forth in N.J.A.C 6A:16-9.2 and 10.2, both of which provision are set forth in Appendix I of this Manual.⁵⁹⁴

A school district may not ever deprive a child with a disability of educational services for more than a total of ten school days in a given year.⁵⁹⁵ If a school district subjects a child to a short-term suspension which results in the suspension of the child for a total of more than ten days in a given year, but is not a “change in placement” (see discussion below regarding “change in placement”), the school district must provide the child with educational services to the extent needed for the child to receive FAPE, but such services may be provided in another setting.⁵⁹⁶ The extent of services required during any such suspension may be determined by school district officials in consultation with at least one of the child’s teachers and case manager,⁵⁹⁷ although school districts should be encouraged to involve parents in such decisions.

Procedures and Services for Long-Term Suspensions

A school district may impose a long-term suspension of more than ten school days on a child with a disability under the same standards and procedures which apply to non-disabled children, so long as (1) the child’s IEP does not provide otherwise, and (2) the child’s conduct is determined not to be a “manifestation” of the child’s disability.⁵⁹⁸ During

“A meeting must be convened within ten school days of any decision to suspend a child for more than ten days because of a violation of a school district’s code of student conduct to determine if the child’s conduct was a manifestation of the child’s disability.”

any period of suspension of five days or more, the school district must provide educational services to the child with a disability which enable the child to receive FAPE consistent with the child’s IEP, although in an alternative educational setting.⁵⁹⁹ Such services may be provided through an “alternative education program” or “home or out-of-school instruction” which meet, respectively, criteria set forth in N.J.A.C 6A:16-9.2 and 10.2, both of which provision are set forth in Appendix I of this Manual, as long as the requirements of the child’s IEP are also met.⁶⁰⁰

A meeting must be convened within ten school days of any decision to suspend a child for more than ten days because of a violation of a school district’s code of student conduct to determine if the child’s conduct was a manifestation of the child’s disability.⁶⁰¹ The child’s conduct must be determined to be a manifestation of the child’s disability if (1) it was “caused by, or had a direct and substantial relationship to” the child’s disability, or (2) it was “the direct result of the [school district]’s failure to implement the IEP.⁶⁰² If the child’s conduct is determined to be a manifestation of the child’s disability, the IEP team must immediately return the child to the placement from which he was suspended, unless (1) “special circumstances” (discussed below) exist which justify the child’s immediate placement in an “interim alternative educational setting,” or (2) after development of a new, or review of the old “behavioral intervention plan,” the parent and the school district agree to a change of placement.⁶⁰³

The determination of whether a child’s conduct was a manifestation of the child’s disability must be made by a representative of the school district, the parent and “relevant” members of the IEP team, as determined by the parent and school district.⁶⁰⁴ In making this determination, this group must review and consider all relevant information in the child’s file, including the child’s IEP, any teacher observations and relevant information provided by the parents.⁶⁰⁵

Whenever a child is suspended for more than ten consecutive school days, the child must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavioral violation so that it does not happen again.⁶⁰⁶ Moreover, whenever a child’s behavior is determined to be a manifestation of the child’s disability, the child’s IEP team **must** ensure that a functional behavioral assessment is conducted and the IEP must develop a behavioral intervention plan, unless a functional behavioral assessment had already been completed and a behavioral intervention plan had been developed before the behavior that resulted in the suspension occurred, in which case the IEP team must review the child’s behavioral intervention plan, and modify it as necessary to address the behavior.⁶⁰⁷

If it is determined that a child’s behavior was not a manifestation of the child’s disability, the child may be suspended for more than ten consecutive school days, provided (1) the child is afforded the same protections that apply to all children, and (2) the child continues to receive, in an interim alternative educational setting, educational services which enable the child to receive FAPE and are consistent with the child’s IEP.⁶⁰⁸

School District Authority to Impose 45-Day Involuntary Placements in Interim Alternative Educational Settings

School district officials may, without regard to whether the behavior was a manifestation of the child’s disability, place a child with a disability for not more than 45 calendar days in an interim alternative educational setting if the child, while at school, on school premises, or at a school function: (1) carries or possesses a weapon; (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or (3) inflicts serious bodily injury upon another person.⁶⁰⁹ A school district’s authority to remove a child whose conduct is a manifestation of the child’s disability for more than ten consecutive school days without following general IEP procedures is strictly limited to the three special circumstances

specified above, which are limited by specific definitions of the terms “dangerous weapon,” “serious bodily injury,” “controlled substance” and “illegal drug” under federal law.⁶¹⁰ The definitions for these terms are set forth in Appendix J of this manual.

As mentioned in this manual at pp. 49, 50, as with any suspension or removal for more than ten consecutive days, when a child is removed to a 45-day interim educational setting due to weapons, drugs or serious bodily injury, the child is entitled to a full hearing before the school district, at which time he or she can contest the facts that led to the removal. While the school district does not have authority to review the school district’s compliance with the special education laws (those issues are appealed through the due process procedures), the school district must conduct a hearing and determine (1) whether the child did in fact commit the alleged offense; and (2) whether the proposed expulsion or long-term suspension is allowed under, and in accordance with, written school district policy. For further discussion of a child’s due process protections, see the Education Law Center’s manual “Student Discipline Rights and Procedures: A Guide for Advocates,” which is available at www.edlawcenter.org/ELCPublic/Publications/PDF/StudentDisciplineRights_Guide.pdf.

Administrative Law Judge Authority to Impose 45-Day Involuntary Placements in Interim Alternative Educational Settings

Upon the request of a school district, an ALJ may order a change in placement of a child with a disability to an interim alternative educational setting for not more than 45 calendar days if the ALJ determines that maintaining the current placement of the child is “substantially likely to result in injury to the child or others.”⁶¹¹

Procedures and Services for Short-Term Suspensions that Constitute Changes in Placement

A child removed from school for disciplinary reasons is subject to a disciplinary “**change in placement**” if the child is suspended for more than ten consecutive days, or if the child is subject to a series of suspensions that constitute a “pattern” because: (1) the series of suspensions total more than ten school days in a school year, (2) the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of suspensions, and (3) additional factors are relevant such as the length of each suspension, the total amount of time the child has been suspended, and the proximity of the suspensions to one another.⁶¹²

Within ten days of any decision to impose a short-term suspension which constitutes a change in placement, the school district must conduct a manifestation determination in the same manner as if the child had been suspended for more than ten days.⁶¹³ If the child’s conduct is determined to be a manifestation of the child’s disability, the same protections that apply to a child recommended for a long-term suspension would apply to the child.⁶¹⁴ If the child’s conduct is not a manifestation of the child’s disability, the short-term suspension can be imposed against the child as any other short-term suspension, except, as discussed above, the child cannot be denied educational services.⁶¹⁵

The determination of whether a short-term suspension constitutes a pattern of removal and therefore a change in placement is made on a case-by-case basis by the school district, but that determination is subject to review through due process and judicial proceedings.⁶¹⁶

All long-term suspensions are considered a change in placement and are subject to the protections discussed above.

Protections for Children Not Yet Eligible for Special Education Services

A child is entitled to all of the discipline procedural protections discussed in this manual, even if he or she is not classified as eligible for special education, if the school

district knew or should have known that the child has a disability.⁶¹⁷ A school district is deemed to have knowledge that a child is a child with a disability if, **before** the behavior that precipitated the disciplinary action occurred, (1) the parent expressed concern in writing to school district supervisory or administrative personnel, or a teacher of the child, that the child is in need of special education and related services, (2) the parent of the child requested a special education evaluation of the child, or (3) the teacher of the child, or other personnel of the school district, expressed specific concerns directly to the director of special education or to other supervisory personnel about a pattern of behavior demonstrated by the child.⁶¹⁸ A child is also to be considered as “potentially a student with a disability,” and provided all the special education discipline protections, if it has been determined that an evaluation of the child is warranted.⁶¹⁹

A school district is **not** considered to have knowledge that a child has a disability if (1) the parent of the child has not allowed the child to be evaluated for eligibility for special education services, (2) the parent has refused special education services, or, (3) the child was evaluated and it was determined that the child was not a child with a disability.⁶²⁰

If it is determined that an evaluation is warranted after a child is subject to disciplinary action, the evaluation must be conducted on an expedited basis.⁶²¹ If it is determined that the child is a child with a disability, the child is entitled to all the IDEA services and procedural protections available to children with disabilities subject to discipline.⁶²²

Parental Appeals of Manifestation Determinations and Disciplinary Changes in Placement

A parent may request an expedited due process hearing to challenge a school district’s manifestation determination or any disciplinary change in placement, including a school district’s unilateral decision to place a child in a 45-day interim alternative educational setting, placement of a child during any suspension that constitutes a change in placement, determination of whether a suspension constitutes a pattern of exclusion, and determination of whether a school district should be deemed to have knowledge that a child is a child with a disability or whether a child should be treated as “potentially a student with a disability.”⁶²³ An expedited hearing of a manifestation determination or disciplinary change in placement must be completed within 20 **school days** of when the request for the hearing is filed,⁶²⁴ and the ALJ must issue a decision within ten **school days** after the hearing is completed, **without exception or extensions**.⁶²⁵

Unless the parents and the school district agree in writing to waive the resolution meeting required whenever a due process hearing is requested, a resolution meeting must occur within seven days of receiving notice of the due process complaint,⁶²⁶ and the due process hearing may then proceed, unless the matter has been resolved to the satisfaction of both parties within 15 **days** of receipt of the due process complaint.⁶²⁷ Before an expedited hearing, the parties must complete the exchange of relevant records and information at least two **business days** before the hearing.⁶²⁸

No “Stay Put” Pending Disciplinary Appeals

Pending the appeal of a manifestation determination or disciplinary change in placement, the child must remain in the interim alternative educational setting unless the period of removal expires before the appeal is decided.⁶²⁹ In other words, “stay put,” which is described in this manual at p. 32, is not available while appeals of manifestation determinations or disciplinary changes in placement are pending.

The Rights of Children in Out-of-District Placements

A child with a disability placed by a school district in an out-of-district placement is

entitled to all of the discipline procedural protections granted to children in public schools.⁶³⁰ Whenever a child is subject to a short-term removal, discussed in this manual at p. 49, the principal of the out-of-district school must send written notice, including the reasons for the removal, to the child's case manager.⁶³¹ In the case of a disciplinary "change of placement," discussed in this manual at p. 51, or long-term removal, discussed in this manual at p. 49, the out-of-district school may not take disciplinary action alone, but may only pursue a disciplinary change of placement in conjunction with the child's school district, and all of the procedural requirements of IDEA and New Jersey's Student Conduct regulations must be met.⁶³² An out-of-district school may not unilaterally terminate a child's placement.⁶³³

SERVICES FOR CHILDREN PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS

School districts must provide limited special education services to children with disabilities who are enrolled by their parents in private (nonpublic) schools or early childhood programs.⁶³⁴ School districts are required to locate, identify and evaluate all children with disabilities attending private schools within the school district to the same extent as children in public schools.⁶³⁵ However, children who are placed in private schools by their parents do not have the same right to receive the special education services they would receive if enrolled in the public school system.⁶³⁶ Rather, the school district is obligated to provide services to some children in private schools based on a mathematical formula related to the federal funding the school district receives for all children with disabilities within the school district, and the proportion of these children who attend private schools, and the school district has great discretion in how and to whom these services will be provided.⁶³⁷

In designing and developing special education and related services for parentally-placed children with disabilities, the school district must, in a timely and meaningful way, consult with private school representatives and representatives of parents of parentally-placed private school children.⁶³⁸ The subject of such consultation must include: (1) how children will be identified, located and evaluated; (2) how parents, teachers and private school district officials will be informed of the process; (3) the determination of the proportionate share of federal IDEA funds available to serve parentally-placed private school children with disabilities; (4) how, where and by whom special education and related services will be provided; (5) the types of services that will be provided; and, (6) how special education and related services will be apportioned if funds are insufficient to serve all children.⁶³⁹ Services to parentally-placed children with disabilities may be provided by school district personnel or through contracts with individuals or approved clinics or agencies.⁶⁴⁰ Such services must be secular, neutral and non-ideological.⁶⁴¹

Through the process developed in consultation with private school representatives and representatives of parents, the school district will make the final decision with respect to services that will be provided to eligible parentally-placed private school children.⁶⁴² For each parentally-placed child who will receive special education and related services, the school district must initiate and conduct meetings, similar to IEP team meetings, to develop, review and revise a "service plan" that describes the special education and related services that will be provided to the child.⁶⁴³ The school district must ensure that a representative of the private school attends the meeting.⁶⁴⁴ Services may be provided on the premises of private schools, including religious schools.⁶⁴⁵ If necessary for the child to benefit from, or participate in, the services included in the child's service plan, transportation must be provided, but transportation need not be provided from the child's home to the private school.⁶⁴⁶

"A child with a disability placed by a school district in an out-of-district placement is entitled to all of the discipline procedural protections granted to students in public schools."

“Common examples of accommodations or modifications included in Section 504 plans include physical barrier removal, seating placement, modification of the curriculum, extended time for testing, testing modifications, adjusted class schedules and use of aids...”

An important difference between the right of children with disabilities enrolled in public and private schools is the complaint procedures available to each. For children enrolled by their parents in private schools, mediation and due process procedures, discussed in this manual at pp. 32, 38, are available only to address complaints with respect to their location, identification, evaluation, determination of eligibility and reevaluation.⁶⁴⁷ Mediation and due process procedures are not available to complain about special education or related services.⁶⁴⁸ Such complaints must be addressed through the complaint investigation process, discussed in this manual at p. 39.⁶⁴⁹ Parents and private schools representatives may also file complaints with respect to any failure by a school district to comply with requirements related to the provision of special education and related services to children with disabilities in private schools, including those related to the school district’s obligation to consult with private school officials and parents, as mentioned above.⁶⁵⁰

In addition, all eligible children, including, parentally-placed children with disabilities, are entitled to “remedial” and “auxiliary” services to “be assured the fullest possible opportunity to develop their intellectual capacities.”⁶⁵¹ School districts are responsible for determining the eligibility of private school children with disabilities for speech and language services by a certified speech-language specialist, and for the provision of those services.⁶⁵² School districts are also responsible for determining the eligibility of private school children for “compensatory education,” English as a Second Language services and home instruction, as well as for the provision of those services.⁶⁵³ “Compensatory education,” as the term is used here, consists of supplementary preventive and remedial programs designed either to improve a child’s computational skills or communication skills.⁶⁵⁴ Before providing any services described in this paragraph, a school district must obtain parental consent.⁶⁵⁵ Children with disabilities who receive services described in this paragraph are also entitled to a service plan.⁶⁵⁶ Children with disabilities receiving services described in this paragraph may request mediation or a due process hearing only with respect to their location, identification, evaluation, determination of eligibility and reevaluation.⁶⁵⁷ Disputes regarding the provision of services described in this paragraph must be addressed through the complaint investigation procedures described in this manual at page 39.⁶⁵⁸

Children placed in private schools by their school district are entitled to all the same rights as if they were attending public school.⁶⁵⁹

THE RIGHTS OF CHILDREN IN CHARTER SCHOOLS

Children in charter schools are entitled to all the same rights and services under IDEA as children in other public schools.⁶⁶⁰ The board of trustees of a charter school is defined as a “district board of education” (school district) under New Jersey’s special education regulations, and is responsible for the location, identification, evaluation, determination of eligibility, development of an IEP and provision of FAPE to children with disabilities in the charter school.⁶⁶¹

PARENT ADVISORY GROUPS

Each school district must ensure that a special education parent advisory group is in place in the district to provide input to the district on issues concerning students with disabilities.⁶⁶²

Pursuant to Part C of IDEA, children from birth to age three are eligible for Early Intervention services if they have a developmental delay or a physical or mental disability that is likely to result in a developmental delay.⁶⁶³ The term developmental delay includes delays in physical, developmental, language, speech, cognitive, emotional or social development, or in self-help skills.⁶⁶⁴ Services for children from birth to age three with these delays are provided through the New Jersey Department of Health and numerous local contracting agencies, not through the NJDOE or local school districts.⁶⁶⁵

Early Intervention services are services needed to meet the child's developmental needs.⁶⁶⁶ These can include, but are not limited to, occupational, physical and speech/language therapies, psychological services and specialized learning instruction.⁶⁶⁷ Services can be provided in the child's home, at the child's day care center or in a separate, specialized facility, depending on the child's needs.⁶⁶⁸ Early Intervention services also include family training and counseling and other assistance needed by the family to support the child's development.⁶⁶⁹ Children from birth to age three have the right to multi-disciplinary assessments and individualized programs and services.⁶⁷⁰ Parents have the right to receive written notices of any proposed action concerning their child, to accept or decline the proposal and to request a hearing to resolve their concerns.⁶⁷¹ Early Intervention services are free for children whose families are below 350% of the federal poverty level, and are available on a sliding-fee scale to all other children.⁶⁷²

A parent who thinks his or her child is eligible for Early Intervention services should call PROJECT CHILD FIND at 800-322-8174 (voice); 609-984-8432 (TDD) for information and referral to an Early Intervention program or other local agency for evaluation.

At press time, the Department of Health issued, for comment and consideration, proposed state regulations governing early intervention programs. Information regarding the status of the proposed regulations can be obtained by visiting www.njeis.org or calling 800-322-8174 (voice); 609-984-8432 (TDD). Additional information about Early Intervention services can be obtained from a brochure entitled "New Jersey's Early Intervention System: Frequently Asked Questions," which is produced by New Jersey Protection & Advocacy, Inc. and can be obtained by visiting their website at www.njpanda.org/pdf/FAQ%20final%20version%20for%20web.pdf or calling them at 800-922-7233 (voice); 609-633-7106 (TDD).

THE RIGHT TO EDUCATIONAL SERVICES AND ACCOMMODATIONS UNDER SECTION 504 OF THE REHABILITATION ACT

In addition to the rights and protections already discussed in this manual, a child with a disability may be entitled to educational programs, services, modifications or accommodations under Section 504 of the Rehabilitation Act.⁶⁷³ As Section 504 applies to a broader range of children than IDEA, it may require the provision of programs and services to children who are not eligible for special education under IDEA or who do not need special education services. See discussion of the definition of "child with a disability" in this manual at p. 4.

Eligibility Under Section 504

Under Section 504, a person with a disability is defined as a person who "has a physical or mental impairment which substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."⁶⁷⁴ "Major life activities" include functions such as learning, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing and working.⁶⁷⁵ All children classified as having a disability under IDEA meet the definition of a person with a disability under Section 504 because of the impact of a physical or mental impairment upon the child's ability to learn.⁶⁷⁶

However, some children with disabilities who might not be eligible under IDEA because they do not need special education services might nevertheless be eligible for protection or services under Section 504. Common examples of such children are children with physical disabilities such as epilepsy, muscular dystrophy, diabetes, severe allergies or asthma who do not need special education services. Of course, children with these conditions often do need special education and, thus, may qualify for services under IDEA as well.

Services Required Under Section 504

Similar to IDEA, Section 504 requires school districts to provide FAPE in the LRE to all eligible children with disabilities.⁶⁷⁷ Any child suspected of having a disability under Section 504 must be evaluated, at school district expense, by a team knowledgeable about the child and the suspected disability, using appropriate assessment standards and procedures.⁶⁷⁸ The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability and the needed services.⁶⁷⁹

If the team determines that the child has a disability under Section 504, it must document and notify the parent of its decision and its plan for the delivery of needed services.⁶⁸⁰ That plan is often referred to as a “504 Plan.” The special education IEP format satisfies Section 504’s requirement for a written plan, although the school district may use another format.⁶⁸¹ Again, the determination of what services are needed must be made by a group of persons knowledgeable about the child.⁶⁸² The decisions about Section 504 eligibility and services must be documented in the child’s file and reviewed periodically as necessary to ensure that the child receives FAPE in the LRE.⁶⁸³

Most children with disabilities who need additional education services are classified under IDEA and have an IEP and therefore do not need a Section 504 plan. Most children who need a Section 504 plan are those who do not need special education services, and therefore do not have an IEP, but only need accommodations or modifications or just need related services. Common examples of accommodations or modifications included in Section 504 plans include physical barrier removal, seating placement, modification of the curriculum, extended time for testing, testing modifications, adjusted class schedules and use of aids (for example, tape recorder, calculator, computer, modified texts). Common examples of services included in Section 504 plans include administration of medication, monitoring of physical status, tutoring, counseling, a behavioral plan, occupational and physical therapy, and monitoring of blood levels. Again, a 504 plan may include special education services if needed for a child with a disability who does not meet eligibility criteria under IDEA.

Procedural Protections under Section 504

Procedural safeguards under Section 504 are similar to, though not as extensive as, those provided under the special education laws.⁶⁸⁴ A school district must give a parent written notice of actions affecting the identification, evaluation or placement of the child.⁶⁸⁵ A child must be re-evaluated prior to a significant change in placement.⁶⁸⁶

A child eligible for Section 504 services is not entitled to all the discipline procedures and protections available to children under the special education laws, but a school district may not impose a disciplinary change of placement on a child if the child’s behavior was a manifestation of the child’s disability,⁶⁸⁷ as discussed in this manual at p. 50. As with special education disputes, a parent is entitled to an impartial hearing if he or she disagrees with a school district decision.⁶⁸⁸ A request for a Section 504 hearing is handled in the same manner as a request for a special education hearing,⁶⁸⁹ discussed in this manual at p. 32, except there is no resolution period or meeting required.⁶⁹⁰

Discrimination Prohibited under Section 504

In addition to mandating provision of services as discussed above, Section 504 also prohibits discrimination on the basis of disability. Under Section 504, no child with a disability may be excluded from, denied the benefits of, or subjected to, discrimination under any program funded by the federal government.⁶⁹¹ All public schools in New Jersey receive federal money, as do private special education schools and programs that accept tuition payments from public school districts.

Under Section 504, a school district or private school receiving federal funds discriminates against a child with a disability if it denies physical or other access to a program or service; fails to make changes so that access is possible; offers a program that is not as good or effective as that offered to children without disabilities; or provides a separate program or service for children with disabilities instead of making a good faith effort to make changes that will allow access.⁶⁹²

LIST OF ABBREVIATIONS FOUND IN THIS MANUAL

ADHD – attention deficit hyperactivity disorder	FBA – functional behavioral assessment
ALJ – administrative law judge	HSPA – High School Proficiency Assessment
APA – Alternate Proficiency Assessment	IDEA – Individuals with Disabilities Education Act
ATAC – New Jersey Assistive Technology Advocacy Center	IEP – individualized education program
BIP – behavior intervention plan	IFSP – Individualized Family Service Plan
CBVI – New Jersey Commission for the Blind and Visually Impaired	LRE – least restrictive environment
CCCS – Core Curriculum Content Standards	NCLB – No Child Left Behind Act
CCCSSD – Core Curriculum Content Standards for Students with Severe Disabilities	NJDOE – New Jersey Department of Education
DDD – New Jersey Division of Developmental Disabilities	OAL – New Jersey Office of Administrative Law
DVRS – New Jersey Division of Vocational Rehabilitation Services	OT – occupational therapy
DYFS – New Jersey Division of Youth and Family Services	PRISE – Parental Rights in Special Education
ELC – Education Law Center	PT – physical therapy
ESY – Extended School Year	RTI – response to scientifically based intervention
FAPE – free appropriate public education	Section 504 – Section 504 of the Rehabilitation Act
	SRA – Special Review Assessment

Federal Statutes and Regulations

The main federal law involving the educational rights for children with disabilities, and the source of most of the rights and procedures discussed in this manual, is the Individuals with Disabilities Education Act (IDEA). This law, previously known as the Education For All Handicapped Children Act, requires states receiving federal funds under IDEA (of which New Jersey is one) to provide a free appropriate public education for all children with disabilities between the ages of three and 21. The law specifies what states must do to meet this requirement, and guarantees the right of parents to participate fully in planning and monitoring the educational program and services to be provided to their child.

IDEA is published in the United States Code at 20 U.S.C. § 1400, *et seq.*, and is available at <http://idea.ed.gov/download/statute.html>. The United States Department of Education regulations implementing IDEA are published in the Code of Federal Regulations at 34 C.F.R. Part 300 and are available at <http://idea.ed.gov/download/finalregulations.pdf>.

Another federal law which affects children with disabilities is Section 504 of the Rehabilitation Act and it is also discussed in this manual. Section 504 requires public schools to provide children with disabilities a free appropriate public education. Section 504 is also a civil rights law that prohibits discrimination against persons with disabilities in programs receiving federal funds.

Section 504 is published in the United States Code at 29 U.S.C. § 794, and is available at http://www.law.cornell.edu/uscode/29/usc_sec_29_00000794---000-.html. The United States Department of Education regulations implementing Section 504 are published in the Code of Federal Regulations at 34 C.F.R. Part 104, and is available at <http://www.ed.gov/policy/rights/reg/ocr/34cfr104.pdf>.

State Statutes and Regulations

Even before the enactment of federal laws relating to special education, New Jersey had laws requiring school districts to provide educational services to children with disabilities. The New Jersey statute is published in the New Jersey Statutes Annotated at N.J.S.A. 18A:46-1, *et seq.*, and is available at http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=111640332&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={8088}&softpage=Doc_Frame_PG42. New Jersey also has special education regulations which implement IDEA and the federal regulations. These regulations are published in the New Jersey Administrative Code at N.J.A.C. 6A:14-1, *et seq.*, and for the due process hearing procedures, at N.J.A.C. 1:6A-1, *et seq.* New Jersey's special education regulations are available from school districts, the New Jersey Department of Education and at www.nj.gov/education/code/current/title6a/chap14.pdf. The due process hearing regulations are available from the New Jersey Office of Administrative Law and at www.michie.com/newjersey/lpext.dll?f=templates&fn=main-h.htm&cp.

In any case where New Jersey law and practices does not meet the minimum requirements or the federal laws, it is the federal laws, which govern.

A child is eligible for special education and related services under the New Jersey special education regulations, N.J.A.C. 6A:14-3.5, if he or she has one or more of the disabilities defined below; the disability adversely affects the student's educational performance and the student is in need of special education and related services:

1. "Auditorily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditorily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.
 - i. "Deafness"—The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.
 - ii. "Hearing impairment"—An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.
2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.
3. "Cognitively impaired" corresponds to "mentally retarded" and means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:
 - i. "Mild cognitive impairment" corresponds to "educable" and means a level of cognitive development and adaptive behavior in home, school and community settings that are mildly below age expectations with respect to all of the following:
 - (1) The quality and rate of learning;
 - (2) The use of symbols for the interpretation of information and the solution of problems; and
 - (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.
 - ii. "Moderate cognitive impairment" corresponds to "trainable" and means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:
 - (1) The ability to use symbols in the solution of problems of low complexity;
 - (2) The ability to function socially without direct and close supervision in home, school and community settings; and
 - (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.
 - iii. "Severe cognitive impairment" corresponds to "eligible for day training" and

means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.
 - i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.
 - ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).
5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:
 - i. An inability to learn that cannot be explained by intellectual, sensory or health factors;
 - ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - iii. Inappropriate types of behaviors or feelings under normal circumstances;
 - iv. A general pervasive mood of unhappiness or depression; or
 - v. A tendency to develop physical symptoms or fears associated with personal or school problems.
6. "Multiply disabled" corresponds to "multiply handicapped" and "multiple disabilities," and means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities includes cognitively impaired-blindness, cognitively impaired-orthopedic impairment, etc. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiply disabled. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." Multiply disabled does not include deaf-blindness.
7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
8. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or

loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.

9. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.
10. "Preschool child with a disability" corresponds to preschool handicapped and means a child between the ages of three and five experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i through v below, and requires special education and related services. When utilizing a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.
 - i. Physical, including gross motor, fine motor and sensory (vision and hearing);
 - ii. Cognitive;
 - iii. Communication;
 - iv. Social and emotional; and
 - v. Adaptive.
11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.
12. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
 - i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:
 - (1) Basic reading skills;
 - (2) Reading comprehension;
 - (3) Oral expression;
 - (4) Listening comprehension;
 - (5) Mathematical calculation;
 - (6) Mathematical problem solving;
 - (7) Written expression; and
 - (8) Reading fluency.
 - ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.
 - iii. The term severe discrepancy does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.

- iv. The district shall, if it utilizes the severe discrepancy methodology, adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.
- 13. “Traumatic brain injury” corresponds to “neurologically impaired” and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
- 14. “Visually impaired” corresponds to “visually handicapped” and means an impairment in vision that, even with correction, adversely affects a student’s educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

A child is eligible for speech-language services under the New Jersey special education regulations, N.J.A.C. 6A:14-3.6, if he or she meets the following criteria:

(a) "Eligible for speech-language services" means a speech and/or language disorder as follows:

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

(b) The evaluation for a speech disorder shall be conducted according to N.J.A.C. 6A:14-3.4(g). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria in (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:

1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.
2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.
3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.

(c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(k)1. The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting.

(d) The IEP shall be developed in a meeting according to N.J.A.C. 6A:14-2.3(k)2. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results and the service provider at the IEP meeting. The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve as the agency representative at the IEP meeting.

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

**APPENDIX D
SAMPLE PARENT LETTER REQUESTING AN EVALUATION**

PARENT ADDRESS
PARENT PHONE NUMBER
DATE

CHILD STUDY TEAM MEMBERS
CHILD'S SCHOOL
ADDRESS

Dear _____ :

I am the parent of _____, whose date of birth is _____ and who is a student in the _____ grade.

My child has not been doing well in school and I believe _____ may need special education services. I am therefore requesting a complete child study team evaluation to determine if _____ is eligible for special education, and if so, what programs and services are needed. I understand that under state regulation, I am a member of the evaluation team and that you must schedule a meeting with me to discuss the nature and scope of the evaluation within 20 calendar days of this letter. Please contact me to let me know the time and date of the meeting.

I hereby give my consent for the evaluation to be done. I understand that under state regulation, the evaluation must be completed and _____'s program must be implemented within 90 calendar days from the date of my consent.

Should you have any questions about this request, please contact me.

Thank you.

Sincerely,

PARENT NAME

cc: DIRECTOR OF SPECIAL SERVICES
FOR THE SCHOOL DISTRICT

PARENT ADDRESS
PARENT PHONE NUMBER

DATE

CHILD STUDY TEAM CASE MANAGER
CHILD'S SCHOOL
ADDRESS

Dear _____ :

I am the parent of _____, whose date of birth is _____ and who is a student in the _____ grade/program.

My child has not been doing well in school. In order to understand what changes may be needed in my child's special education program or services, I am requesting that _____ receive a complete re-evaluation.

I understand that under state regulation, I am a member of the evaluation team and that you must schedule a meeting with me to discuss the nature and scope of the evaluation within 20 calendar days of this letter. Please contact me to let me know the time and date of the meeting.

Should you have any questions about this request, please contact me.

Thank you.

Sincerely,

PARENT NAME

cc: DIRECTOR OF SPECIAL SERVICES
FOR THE SCHOOL DISTRICT

**APPENDIX F
SAMPLE PARENT LETTER REQUESTING AN INDEPENDENT EVALUATION**

PARENT ADDRESS
PARENT PHONE NUMBER
DATE

CHILD STUDY TEAM MEMBERS
CHILD'S SCHOOL
ADDRESS

Dear _____ :

I am the parent of _____, whose date of birth is _____ and who is a student in the _____ grade/program.

I am requesting that the school district agree to pay for an independent evaluation of my child. I request an independent evaluation by the following specialists: (for example, School Psychologist, School Social Worker, Learning Disabilities Teacher-Consultant, Psychiatrist, Neurologist, Speech/Language Specialist, Physical Therapist.)

I understand that the school district must provide the requested independent evaluation without undue delay, unless it initiates a due process hearing within 20 calendar days to show that its evaluation is appropriate. Upon receipt of this request, please provide me information about where I can obtain my independent evaluation and criteria for independent evaluations.

Thank you.

Sincerely,

PARENT NAME

cc: DIRECTOR OF SPECIAL SERVICES
FOR THE SCHOOL DISTRICT

PARENT ADDRESS
PARENT PHONE NUMBER
DATE

CHILD STUDY TEAM CASE MANAGER
CHILD'S SCHOOL
ADDRESS

Dear _____ :

I am the parent of _____, whose date of birth is _____ and who is a student in the _____ grade.

I am writing because my child's IEP is not being implemented appropriately. The following services, supports, and accommodations, which are contained in my child's IEP, are not being provided: _____

or

I am writing because my child is having difficulty in school and is not making adequate progress under his or her current IEP. I am particularly concerned about the following:

Therefore, I request the following: _____

I understand that under state regulation, I am a member of the IEP team and that you must respond to my request within 20 calendar days of this letter. I further understand that when a meeting is required to make a determination and respond to my request, that the meeting must be conducted and a determination made within 20 calendar days. Please contact me to let me know the time and date of the meeting.

Should you have any questions about this request, please contact me.

Thank you.

Sincerely,

YOUR NAME

cc: DIRECTOR OF SPECIAL SERVICES FOR THE SCHOOL DISTRICT

APPENDIX H: SAMPLE PARENT LETTER REQUESTING IEP TEAM MEMBER PRESENCE AT IEP MEETING

PARENT ADDRESS
PARENT PHONE NUMBER
DATE

CHILD'S CASE MANAGER
CHILD'S SCHOOL
ADDRESS

Dear :

I am looking forward to participating in my child _____'s IEP meeting on _____, 2007 at __:__ .m. at the _____ School. In order to develop an appropriate IEP for my child and to allow for my participation as an equal member of my child's IEP Team, I must be able to discuss the details of his program with all members of the team. For this reason, I request that the following required team members be present for the entire IEP meeting:

Ms. Samantha Jones, General Education Teacher*
Mr. James Smith, Special Education Teacher

In addition, based on my child's current situation, I am requesting that the following individuals also be present for the entire meeting:

Mr. John Hall, Guidance Counselor
Ms. Victoria Lane, Speech/Language Pathologist
Ms. Sarah White, Behavioral Consultant
Ms. Catherine Miller, Classroom Aide

Your assistance with this important matter would be appreciated. Please provide written confirmation that the listed individuals, as well as a representative from the district who is knowledgeable about the district's programs and has the authority to make commitments on behalf of the district, will be in attendance and are scheduled to be present during the entire meeting.

Thank you.

Sincerely,

PARENT NAME

cc: DIRECTOR OF SPECIAL SERVICES FOR THE SCHOOL DISTRICT

**Note: The team members listed in this letter are meant as an example only—you should include the people you believe are necessary to the development of an appropriate IEP for your child.*

Prepared by: Renay Zamloot, President, Special Education Leadership Council

Alternative Education Program criteria—N.J.A.C. 6A:16-9.2

(a) Each alternative education program, pursuant to N.J.A.C. 6A:16-1.3, shall fulfill the following program criteria for both high school and middle school programs, unless otherwise noted:

1. A maximum student-teacher ratio of 12:1 for high school programs shall be maintained;
2. A maximum student-teacher ratio of 10:1 for middle school programs shall be maintained;
3. An Individualized Program Plan (IPP) shall be developed for each general education student enrolled in the program.
 - i. The IPP shall be developed by the school district in which the student is enrolled, in consultation with the student’s parent and the receiving school district, pursuant to N.J.A.C. 6A:16-9.1(a), or other agency, pursuant to N.J.A.C. 6A:16-9.1(b), as appropriate.
 - ii. The IPP shall be developed by a multidisciplinary team of professionals with knowledge of the student’s educational, behavioral, emotional, social and health needs.
 - iii. The IPP shall identify the appropriate instructional and support services for addressing the student’s identified needs.
 - iv. The IPP shall be developed in accordance with the format prescribed by the Commissioner of Education and implemented within 30 calendar days of the student’s placement in the alternative education program.
 - (1) The IPP may, but need not, be developed prior to the student’s placement.
 - v. A multidisciplinary team shall review and, as appropriate, revise the IPP prior to the completion of the student’s anticipated enrollment in the alternative education program or prior to the end of the school year, whichever occurs first.
 - (1) The multidisciplinary team shall review and revise the IPP, as needed, at any time during the student’s enrollment in the alternative education program.
 - (2) The multidisciplinary team that reviews the IPP shall include staff from the sending school and the alternative education program who have knowledge of the student’s educational, behavioral, emotional, social and health needs.
 - (3) The student’s parent shall be advised of revisions to the IPP.
4. For a student with a disability, the alternative education program shall be consistent with the student’s Individualized Education Program (IEP), pursuant to N.J.A.C. 6A:14, Special Education.
5. Individualized instruction to students shall address the Core Curriculum Content Standards, pursuant to N.J.A.C. 6A:8-3.1;
6. Instructional staff shall be appropriately certified, pursuant to N.J.A.C. 6A:9-3.3;
7. Compliance with attendance policies, pursuant to N.J.A.C. 6A:16-7.8 and 6A:32-8.3, shall be required;
8. Academic instruction sufficient to fulfill graduation requirements, pursuant to N.J.A.C. 6A:8-5.1, shall be provided to high school students;
9. Comprehensive support services and programs shall address each student’s health, social and emotional development and behavior;
10. Case management services including, but not limited to, monitoring and evaluating student progress and coordinating instructional and support services, pursuant to (a)5, 8, and 9 above, shall be provided;
11. Services to facilitate the transition of students returning to the general or special education program shall be provided; and

12. A minimum student enrollment period of not less than two complete marking periods shall be required.
 - i. If the student is enrolled with less than two complete marking periods remaining prior to the end of the school year, the decision regarding continued placement in the alternative education program shall be made in accordance with N.J.A.C. 6A:16-9.3(a).
 - ii. If the student is removed from the general education program and placed in an alternative education program as a result of a firearm or assault with a weapon offense, the chief school administrator may modify the term of removal or placement on a case-by-case basis, pursuant to N.J.A.C. 6A:16-5.5(b)1 and 5.6(b)1.
 - iii. For the student with a disability, the enrollment period shall be determined by appropriate school personnel in accordance with the provisions of N.J.A.C. 6A:14, Special Education, and the Individuals with Disabilities Education Act of 2004, 20 U.S.C. §§ 1400 *et seq.*

Home or Out-of-School Instruction Criteria—N.J.A.C. 6A:16-10.2

(a) The district board of education shall provide instructional services to an enrolled general education student at the student’s home or other suitable out-of-school setting under the following conditions:

1. The student is mandated by State law and rule for placement in an alternative education program for violations of N.J.A.C. 6A:16-5.5 and 5.6 but placement is not immediately available;
 2. The student is placed on short-term or long-term suspension from participation in the general education program pursuant to N.J.A.C. 6A:16-7.2 and 7.3; or
 3. A court order requires that the student receive instructional services in the home or other out-of-school setting.
- (b) The school district shall provide services no later than five school days after the student has left the general education program.
- (c) The school district in which a student resides shall be responsible for the costs of providing instruction in the home or out-of-school setting either directly or through contract with another board of education, educational services commission, jointure commission or approved clinic or agency.
- (d) The services shall meet the following minimum standards:
1. The school district shall develop an Individualized Program Plan (IPP) for delivery of instruction and maintain a record of delivery of instructional services and student progress.
 - i. For a student expected to be on home instruction for 30 calendar days or more, the IPP shall be developed within 30 calendar days after placement.
 - (1) For a student on short-term suspension from the general education program pursuant to N.J.A.C. 6A:16-7.2, development of an IPP is not required.
 - (2) For a student on long-term suspension from the general education program pursuant to N.J.A.C. 6A:16-7.3, the IPP shall be developed within 30 days following a determination by the district board of education.
 - ii. The IPP shall be based upon consultation with the student’s parent and a multidisciplinary team of professionals with appropriate instructional and educational services credentials to assess the educational, behavioral, emotional, social and health needs of the student and recommend a program to address both educational and behavioral goals;

- iii. The IPP shall incorporate any prior findings and actions recommended through the school building system of Intervention and Referral Services, pursuant to N.J.A.C. 6A:16-8, Intervention and Referral Services;
 - iv. The IPP shall recommend placement in an appropriate educational program, including supports for transition back to the general education setting; and
 - v. The school district shall review the student’s progress, consult with the student’s parent and revise the IPP no less than every 60 calendar days.
2. The teacher providing instruction shall be appropriately certified for the subject and grade level of the student pursuant to N.J.A.C. 6A:9, Professional Licensure and Standards.
 3. The teacher shall provide one-on-one instruction for no fewer than 10 hours per week on three separate days of the week and no fewer than 10 hours per week of additional guided learning experiences that may include the use of technology to provide audio and visual connections to the student’s classroom.
 - i. If home instruction is provided to students in a small group rather than through one-on-one instruction, direct instruction that may include guided learning experiences shall be provided for no fewer than 20 hours per week provided on no fewer than three separate days during the week and the student to teacher ratio shall not exceed 10:1.
 4. The instruction shall meet the Core Curriculum Content Standards in accordance with N.J.A.C. 6A:8 and the requirements of the district board of education for promotion and graduation.
 - (e) If instruction is delivered in the student’s home, a parent or other adult 21 years of age or older who has been designated by the parent shall be present during all periods of home instruction.
 - (f) Refusal or failure by a parent to participate in the development and revision of the student’s IPP as required in (d) above or to be present in the home as required in this subchapter may be deemed a violation of compulsory education laws, pursuant to N.J.S.A. 18A:38-25 through 31, and child neglect laws, pursuant to N.J.S.A. 9:6-1 et seq.
 - (g) The district board of education shall maintain a summary record concerning students receiving home or out-of-school instruction because they could not be placed in the setting recommended as most appropriate in the students’ IPPs.
 1. The summary record shall provide information concerning the number of students categorized by age, grade and gender, the number of weeks on home instruction before placement in the recommended setting, and the reasons for delay.
 2. The district board of education shall provide the summary report annually to the county superintendent of schools.

Definition for “Dangerous Weapon”–18 U.S.C. § 930(g)(2)

The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

Definition for “Serious Bodily Injury”–18 U.S.C. § 1365(h)(3)

The term “serious bodily injury” means bodily injury which involves:

- (A) a substantial risk of death;
- (B) extreme physical pain;
- (C) protracted and obvious disfigurement; or
- (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty

Definition for “Controlled Substance,”–21 USCS § 812 (Schedules I-V) Schedule I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol [Alphacetylmethadol].
4. Alphameprodine.
5. Alphamethadol.
6. Benzethidine.
7. Betacetylmethadol.
8. Betameprodine.
9. Betamethadol.
10. Betaprodine.
11. Clonitazene.
12. Dextromoramide.
13. Dextrorphan.
14. Diampromide.

15. Diethylthiambutene.
16. Dimenoxadol.
17. Dimepheptanol.
18. Dimethylthiambutene.
19. Dioxaphetyl butyrate.
20. Dipipanone.
21. Ethylmethylthiambutene.
22. Etonitazene.
23. Etoxeridine.
24. Furethidine.
25. Hydroxypethidine.
26. Ketobemidone.
27. Levomoramide.
28. Levophenacylmorphan.
29. Morpheridine.
30. Noracymethadol.
31. Norlevorphanol.
32. Normethadone.
33. Norpipanone.
34. Phenadoxone.
35. Phenampromide.
36. Phenomorphan.
37. Phenoperidine.
38. Piritramide.
39. Proheptazine.
40. Properidine.
41. Racemoramide.
42. Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
3. Benzylmorphine.
4. Codeine methylbromide.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
9. Etorphine.
10. Heroin.
11. Hydromorphanol.
12. Methyldesorphine.
13. Methyldihydromorphine.

14. Morphine methylbromide.
15. Morphine methylsulfonate.
16. Morphine-N-Oxide.
17. Myrophine.
18. Nicocodeine.
19. Nicomorphine.
20. Normorphine.
21. Pholcodine.
22. Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3, 4-methylenedioxy amphetamine.
2. 5-methoxy-3, 4-methylenedioxy amphetamine
3. 3, 4, 5-trimethoxy amphetamine.
4. Bufotenine.
5. Diethyltryptamine.
6. Dimethyltryptamine.
7. 4-methyl-2, 5-dimethoxyamphetamine.
8. Ibogaine.
9. Lysergic acid diethylamide.
10. Marihuana.
11. Mescaline.
12. Peyote.
13. N-ethyl-3-piperidyl benzilate.
14. N-methyl-3-piperidyl benzilate.
15. Psilocybin.
16. Psilocyn.
17. Tetrahydrocannabinols.

Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction

and chemical synthesis:

1. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
2. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1), except that these substances shall not include the isoquinoline alkaloids of opium.
3. Opium poppy and poppy straw.
4. coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.
11. Methadone.
12. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-

- carboxylic acid.
14. Pethidine.
 15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
 16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
 17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
 18. Phenazocine.
 19. Piminodine.
 20. Racemethorphan.
 21. Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

Schedule III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
2. Phenmetrazine and its salts.
3. Any substance except an injectable liquid. which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.
4. Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
2. Chorhexadol.
3. Glutethimide.

4. Lysergic acid.
5. Lysergic acid amide.
6. Methyprylon.
7. Phencyclidine.
8. Sulfondiethylmethane.
9. Sulfonethylmethane.
10. Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in

- recognized therapeutic amounts.
- 7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- 8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

Schedule IV

- 1. Barbital.
- 2. Chloral betaine.
- 3. Chloral hydrate.
- 4. Ethchlorvynol.
- 5. Ethinamate.
- 6. Methohexital.
- 7. Meprobamate.
- 8. Methylphenobarbital.
- 9. Paraldehyde.
- 10. Petrichloral.
- 11. Phenobarbital.

Schedule V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- 1. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- 2. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- 3. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- 4. Not more than 2.5 milligrams of

diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

- 5. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Definition for “Illegal Drug” – 20 U.S.C. § 1415(k)(7)(B)

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

- Always keep a copy of any letters, reports, evaluations or other material given to, or received from, school district officials.
- Get a notebook and make notes of any conversations with school district officials, including the date the conversation took place, the name of the persons with whom you speak and their positions and what was said.
- If a school district official promises to do something for a parent or a child, make a note of the name of the person who made the promise and his or her position, the date, what is to be done and the date by which it is supposed to be done.
- Consider taking a friend, family member or other advocate to meetings at the child's school.
- When attending school meetings, ask each person at the meeting to give their name and position, and keep a record of the information or tape record the meeting.
- If told by school district officials "we don't do that" or "we can't do that," make a note of the name of the official who said that, as well as his or her position, and ask the officials for a copy of the written policy, law or regulation on which he or she is relying.
- Learn as much as possible about the child's disability and the rights of parents and children under the special education laws.

**Information and Support
(Disability-Specific)**

ADD/ADHD

Attention Deficit Disorder Association
P.O. Box 543
Pottstown, PA 19464
484-945-2101

Children and Adults with Attention-
Deficit/Hyperactivity Disorder
800-233-4050

Autism

Autism NJ
1450 Parkside Avenue, Suite 22
Ewing, NJ 08638
800-4-AUTISM

Aspergers Syndrome

Aspergers Syndrome Education Network
9 Aspen Circle
Edison, NJ 08820
732-321-0880

Blindness/Visual Impairments

National Federation of the Blind-New Jersey
254 Spruce Street
Bloomfield, NJ 07003
866-632-1940

New Jersey Commission for the Blind and
Visually Impaired
P.O. Box 47017
153 Halsey Street
Newark, NJ 07101
973-648-2111

New Jersey Council for the Blind
520 Ewingville Road
Ewing, NJ 08638
609-882-2446

New Jersey Foundation for the Blind
P.O. Box 929
230 Diamond Spring Road
Denville, NJ 07934
973-627-0055

Brain Injury

Brain Injury Association of New Jersey
1090 King George Post Road, Suite 708
Edison, NJ 08837
732-738-1132

Cancer

American Children Cancer Association
888-788-HOPE

Cerebral Palsy

Cerebral Palsy of New Jersey
354 South Broad Street
Trenton, NJ 08608
609-392-4004

Cystic Fibrosis

Cystic Fibrosis Foundation
117 Kinderkamack Road
River Edge, NJ 07661
201-457-1800

Deaf and Hearing Impairments

New Jersey Association of the Deaf, Inc.
253-8 Echelon Road
Voorhees, NJ 09043
609-242-0240

New Jersey Department of Human Services
Division of Deaf and Hard of Hearing
P.O. Box 074
Trenton, NJ 08625
800-792-8339 V/TTY

Deaf-Blindness

New Jersey Association of the Deaf-Blind, Inc.
24 K World's Fair Drive
Somerset, NJ 08873
732-805-1912

New Jersey Technical Assistance Project
New Jersey Department of Education
Office of Special Education Programs
P.O. Box 500
Trenton, NJ 08625-0500
609-633-6430

Developmental Disabilities

The Arc of New Jersey
985 Livingston Avenue
North Brunswick, NJ 08902
732-246-2525

New Jersey Dept of Human Services
Division of Developmental Disabilities
800-832-9173

Down Syndrome

The Judy Center for Down Syndrome
30 Prospect Avenue
Hackensack, NJ 07601
201-996-5839

Dyslexia

International Dyslexia Association
New Jersey Branch
908-879-0466

Epilepsy

Epilepsy Foundation of New Jersey
429 River View Plaza
Trenton, NJ 08611
800-336-5843

Learning Disabilities

Learning Disabilities Association of
New Jersey
Northern New Jersey: 973-335-8824
Central New Jersey: 732-774-4737
Southern New Jersey: 609-823-5608

Mental Health

Association for the Advancement
of Mental Health
819 Alexander Road
Princeton, NJ 08540
609-452-2088

Mental Health Association in New Jersey

60 South Fullerton Avenue
Montclair, NJ 07042
973-744-1026

Multiple Sclerosis

Multiple Sclerosis Association of America
706 Haddonfield Road
Cherry Hill, NJ 08002
856-488-4500

Muscular Dystrophy

Muscular Dystrophy Association
1030 St. Georges Avenue, Suite 303A
Avenel, NJ 07001
732-750-2333

Respiratory Disease

American Lung Association
1600 Route 22 East
Union, NJ 07083-3407
908-687-9340

Speech, Language and Hearing

New Jersey Speech, Language and
Hearing Association
170 Township Line Road
Belle Mead, NJ 08502
908-359-1184

Spina Bifida

Spina Bifida Association of the
Tri-State Region
84 Park Avenue
Flemington, NJ 08822
908-782-7475

Spinal Cord Injury

Christopher and Dana Reeve
Paralysis Resource Center
Short Hills Plaza
636 Morris Turnpike, Suite 3A
Short Hills, NJ 07078
800-539-7309

Tourette Syndrome

Tourette Syndrome Association
of New Jersey, Inc.
50 Division Street, Suite 205
Somerville, NJ 08876
908-575-7350

Traumatic Brain Injury

Brain Injury Association of New Jersey
1090 King George Post Road, Suite 708
Edison, NJ 08837
800-669-4323

Information & Support (General)

Association for Special Children and Families
P.O. Box 494
Hewitt, NJ 07421-0494
973-728-8744

Family Support Center of New Jersey
2516 Route 35N
Manasquan, NJ 08736
800-372-6510

New Jersey Partnership for Children
3705 Quakerbridge Road, Suite 116
Hamilton, NJ 08619
877-652-7624

Rehabilitation Technology Services and
Technology Lending Center
354 South Broad Street
Trenton, NJ 08608
888-322-1918
TDD 609-392-7044

Special Parent Assistance and Resources for
Kids for Life and Education
721 Broadway
Bayonne, NJ 07002
201-656-3779

Special Education Advocacy

Alliance for the Betterment of
Citizens with Disabilities
127 Route 206, Suite 18
Hamilton, NJ 08610
609-581-8375

Association for Children of New Jersey
35 Halsey Street
Newark, NJ 07102
973-643-3876

Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
973-624-1815

Legal Services of New Jersey
888-LSNJ-LAW
(888-576-5529)

New Jersey Coalition for Inclusive Education
9 Auer Court, Suite H
East Brunswick, NJ 08810
732-613-0400

Disability Rights New Jersey
210 South Broad Street, 3rd Fl.
Trenton, NJ 08608
800-922-7233

Parent Information Center
104-A Fort Lee Road
Teaneck, NJ 07666
201-692-0898

Special Needs Advocates for Parents
248 Columbia Turnpike
Bldg. #3, Lower Level
Florham Park, NJ 07932
888-0310-9889

Statewide Parent Advocacy Network
35 Halsey Street, 4th Fl.
Newark, NJ 07102
800-654-7726

Web sites

ARC of New Jersey
(information about legislative initiatives rele-
vant to children and adults with intellectual
and developmental disabilities)
www.arcnj.org

Council of Parent Attorneys and Advocates
(special education information and legal
resources)
www.copaa.net

[ERIC Clearinghouse on Education](#)
(education resources including bibliographical materials and full-text journal articles)
www.eric.ed.gov/

[National Center on Education, Disability and Juvenile Justice](#)
(provides assistance in special education matters for youth who are detained or committed)
www.edjj.org

[National Dissemination Center for Children with Disabilities](#)
(information on Early Intervention, disabilities in children and youths, IDEA, No Child Left Behind)
www.nichcy.org

[New Jersey Department of Children and Families, Division of Child Behavioral Health Services](#)
(information on counseling, job opportunities, service etc. for children with emotional disturbances)
www.nj.gov/dcf/behavioral/

[New Jersey Department of Education](#)
(New Jersey education regulations, proposed changes to regulations, departmental policy and position papers)
www.state.nj.us/education

[New Jersey Self-Help Group Clearinghouse](#)
(information about local support groups)
www.medhelp.org/NJGroups/

[Rutgers School of Law Camden](#)
(due process decisions in the New Jersey Office of Administrative Law)
www.lawlibrary.rutgers.edu/

[Special Child Health Services Program](#)
(information on special-needs resources such as early intervention)
www.bergenhealth.org/childhealth

[Statewide Parent Advocacy Network](#)
(information and resources regarding poverty, disability and discrimination concerns)
www.spannj.org

[United States Department of Education, IDEA Home Page](#)
(federal regulations regarding early intervention and special education)
<http://idea.ed.gov>

[United States Department of Education, Office of Civil Rights](#)
(information and resources regarding discrimination in education)
www.ed.gov/about/offices/list/ocr/index.html

[WrightsLaw](#)
(information about special education law and advocacy)
www.wrightslaw.com/

(Oversee special education at the county level and provide technical assistance to school districts)

Ms. Barbara Groff
ATLANTIC COUNTY
6260 Old Harding Highway
Mays Landing, NJ 08330
609-625-0004, ext. 44
FAX: 609-625-6539

Vacant
BERGEN COUNTY
1 Bergen Court Plaza, Rm. 350
Hackensack, NJ 07601
201-336-6877
FAX: 201-336-6880

Ms. Deborah Magee
BURLINGTON COUNTY
3 Union Street
P.O. Box 6000
Mt. Holly, NJ 08060
609-265-5938
FAX: 609-265-5939

Dr. Catherine Thomas
CAMDEN COUNTY
509 Lakeland Road
Blackwood, NJ 08012
856-401-2400
FAX: 856-401-2410

Mrs. Barbara Groff
CAPE MAY COUNTY
4 Moore Road,
Cape May Courthouse, NJ 08210
609-465-1282
FAX: 609-465-2094

Ms. Barbara Ciancaglini
CUMBERLAND COUNTY
19 Landis Avenue
Bridgeton, NJ 08302
856-451-0211, ext. 10
FAX: 856-455-9523

Mr. Mark Lanzi
ESSEX COUNTY
7 Glenwood Avenue, Suite 404
East Orange, NJ 07018
973-395-4677
FAX: 973-395-4696

Ms. Dolores Walther
GLOUCESTER COUNTY
1492 Tanyard Road
Sewell, NJ 08080
856-468-6500 ext. 6019
FAX: 856-468-9115

Ms. Janina Zak-Krasucki
HUDSON COUNTY
595 Newark Avenue
Jersey City, NJ 07306
201-319-3850
FAX: 201-319-3650

Mr. Paul Bilik
HUNTERDON COUNTY
10 Court Street, PO Box 2900
Flemington, NJ 08822
908-788-1414
FAX: 908-788-1457

Ms. Carmen Fanucci
MERCER COUNTY
1075 Old Trenton Road
Trenton, NJ 08690
609-588-5872
FAX: 609-588-5849

Ms. Denise Wilkens
MIDDLESEX COUNTY
1460 Livingston Avenue
Building 400, 2nd Floor
North Brunswick, NJ 08902
732-249-2900
FAX: 732-296-0683

Ms. Karen Frumen
MONMOUTH COUNTY
3435 Highway 9, 4th floor
PO Box 1264
Freehold, NJ 07728
732-431-7823
FAX: 732-431-6511

Vacant
MORRIS COUNTY
Court House, P.O. Box 900
Morristown, NJ 07963
973-829-8556
FAX: 973-285-8341

Ms. Carmen Fanucci
OCEAN COUNTY
212 Washington Street
Toms River, NJ 08753
732-929-2079
FAX: 732-244-8242

Ms. Gladys Miller
PASSAIC COUNTY
501 River Street
Paterson, NJ 07524
973-569-2110
FAX: 973-754-0241

Ms. Barbara Ciancaglini
SALEM COUNTY
94 Market Street, 3rd Floor
Salem, NJ 08079
856-935-7510
FAX: 856-935-6290

Mr. Paul Bilik
SOMERSET COUNTY
Admin. Building, P.O. Box 3000
Somerville, NJ 08876
908-541-7171
FAX: 908-722-6902

Ms. Zola Mills
SUSSEX COUNTY
262 White Lake Road
Sparta, NJ 07871
973-579-6996
FAX: 973-579-6476

Ms. Heather Mills-Pevonis
UNION COUNTY
300 North Avenue East
Westfield, NJ 07090
908-654-9867
FAX: 908-654-9869

Ms. Zola Mills
WARREN COUNTY
537 Oxford Street
Belvidere, NJ 07823
908-475-6030
FAX: 908-475-6035

These are the mailing addresses.
Locations may be different.

NJDOE, July 03, 2007

PLEASE NOTE: In accordance with IDEA 2004, you must complete all the information requested as fully and accurately as possible. Also, you must identify the specific reasons for the disagreement with the identification, evaluation, eligibility, classification, placement or provision of programs or related services for your child. If the information is incomplete or the reasons for your disagreement are vague or unclear, the district may challenge the sufficiency of your request for a due process hearing. Requests for mediation only are not subject to a sufficiency challenge.

THREE copies of the entire petition must be filed with the Office of Special Education Programs and one copy of the entire petition must be filed with the district.

Date: _____

To: Roberta Wohle, Director
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

From: _____

Full name of parent(s) submitting the request

Address: _____

County: _____

Home Phone: (____) ____ - ____ Fax: (____) ____ - ____

Work Phone: (____) ____ - ____ Cell Phone: (____) ____ - ____

Please check whether you will be represented by an attorney or assisted by an advocate.

Name of attorney or advocate: _____

Address: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____

Child's Name : _____ Date of Birth: _____

Child's Address (If different from parent's address)*: _____

District of Residence (district in which parent resides): _____

School the student attends: _____

District where the school is located: _____

Disability category: _____

* In the case of a homeless child, please provide available contact information.

Please check ONE of the following:

- Mediation Only - *Please complete items 2 through 5 below*
- Due Process Hearing - *Please complete items 1 through 5 below*
- Expedited Due Process Hearing for disciplinary matters only - *Please complete items 1 through 5 below*

1. Required Steps for a Due Process Hearing or an Expedited Due Process Hearing (discipline matters only)

When a parent requests a hearing, the district is given an opportunity to resolve the matter before the hearing is scheduled. The district is required to conduct a resolution session (within 15 days for a due process hearing and 7 days for an expedited due process hearing) and you are required to participate. You and the district may choose to participate in mediation conducted by the OSEP in place of a resolution session, or both parties can agree to waive the resolution session and proceed directly to a hearing.

Upon receipt of this notice, a representative of the school district must contact you to arrange a resolution session. If you would like to have the district consider other options, **please check ONE of the following:**

- I am requesting a mediation conference conducted by OSEP in place of a resolution session. If the district agrees to mediation in place of a resolution session, a representative of the district must contact the OSEP at 609-984-1286 to facilitate the scheduling of the mediation conference.
- I want to waive the resolution conference and proceed directly to a due process hearing.

By signing below I am waiving the resolution session and mediation. An authorized representative of the district must also agree in writing to waive the resolution period.

Signature: _____

2. Please provide a description of the nature of the problem and any facts related to the problem. Attach additional sheets as needed:

3. Please provide a description of how this problem could be resolved. Attach additional sheets as needed:

4. A copy of this petition must be provided to the other party. Please check to verify.

___ A copy of this request was sent to the superintendent of the school district:

Name of the superintendent: _____

Address: _____

5. Parent's signature: _____

Note to parent(s) requesting a due process hearing: The IDEA Amendments of 2004 provide that attorneys' fees may be reduced if the parent or parent's attorney unreasonably protracted the final resolution of the controversy or the attorney representing the parent did not provide to the district the appropriate information in the due process request.

**APPENDIX O
PARENTAL REQUEST FOR EMERGENT RELIEF**

To be completed when an interim (temporary) decision is required pending a final decision of the underlying issues in dispute.

Please note: Emergent relief may only be sought when a temporary interim order is necessary pending completion of the underlying due process hearing in accordance with N.J.A.C. 6A:14-2.7(r). To meet the requirements for requesting emergent relief, complete all the information required on the form below and have the completed form notarized. Requests for emergent relief should not be faxed, as an original copy of the application must be filed with the Office of Special Education Programs (OSEP). **Please attach your request for a due process or expedited due process hearing.** All required forms must be completed in order to process a request for emergent relief.

Please submit an original request for emergent relief and an original request for a due process hearing to the OSEP and a copy to the district.

Please describe the nature of the emergent problem and any facts relating to the problem. (Attach additional pages if necessary.):

Please describe how this problem could be resolved. (Attach additional pages if necessary.):

Please check to verify that a copy of this request was sent to the district superintendent:

Name of other party: _____

Address: _____

Phone:(_____)_____-_____

I, _____, of full age, being duly sworn upon
(Name of petitioner)

his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature of Petitioner: _____

Sworn and subscribed to before me this _____ day of _____, _____

Signature of Notary Public or other person authorized to administer an oath or affirmation

Date: _____

To: Roberta Wohle, Director
Office of Special Education Programs (OSEP)
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate Other: _____

Name: _____

Address*: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email address: _____

Provide the name of the student or specify the group of students affected by the alleged violation(s):

School where the alleged violation(s) occurred:

District: _____ County: _____

1. Please check which statement applies:

I am currently involved in, or have recently requested, a due process hearing. I have enclosed a copy of the request.

I am considering filing for a due process hearing. I will send a copy of the request.

I am not planning on filing for a due process hearing.

Note: Any issues contained in a request for a complaint investigation that are also the subject of a due process hearing will be set aside until the conclusion of the hearing. If the Administrative Law Judge makes a ruling on the issue(s), that ruling is binding.

2. Briefly state the specific violation(s) of special education law or regulation that you believe occurred. If you choose to attach additional information or documentation, you must nevertheless summarize the alleged violations, as you see them.

* In the case of a homeless child, please provide available contact information.

3. Specify the period of time or dates when the alleged violation(s) occurred.

Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.

4. Is/Are the alleged violation(s) continuing at present? _____ Yes _____ No

5. State the relevant facts, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, please include a copy of the entire IEP. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request).

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

Complainants are required to forward a copy of the complaint to the Chief School Administrator of the district/education agency against which the complaint is directed at the same time the complaint is filed with the Department of Education.

Check below to verify whether:

___ A copy of the complaint request, along with attachments, was mailed to: _____ (name) on _____ (date);

or

___ A copy of the complaint request, along with attachments, was hand-delivered to: _____ (name) on _____ (date).

Pursuant to N.J.A.C. 6A:14-9.2(b), please note that a complaint cannot be processed until the OSEP is notified that a copy was provided to the appropriate education agency.

Signature: _____
(Person(s) Submitting Request)

Date: _____

To: **Roberta Wohle, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 0862k5-0500

Relationship to Student(s): (Check One)

Parent/Guardian

Attorney

Advocate

From: _____

(Name of person submitting the request)

Address: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

Please note: the Office of Special Education Programs (OSEP) must have a copy of the mediation agreement before any action can be taken with respect to a request for enforcement.

Is a copy of the mediation agreement included with this request? Yes No

If not, is a copy being sent by separate mailing? Yes No

What is the date of the mediation agreement? _____

Subsequent to signing the mediation agreement, have the parties reached any agreements that modify the original mediation agreement? Yes No (If yes, explain below)

Note: If any part of the mediation agreement is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.

When was the action that you are seeking to enforce directed to occur?

Note: A request for enforcement must be made to the OSEP no later than the 90th calendar day from the date that the action directed in the mediation agreement that is the subject of the enforcement was required to have occurred. If your request is untimely, the OSEP will not enforce the request.

Are you currently involved in, or have you recently requested, mediation, a due process hearing or a complaint investigation? Yes No

If you have recently requested mediation or a due process hearing, what is the subject of the disagreement?

Briefly state the specific provision (identify the page and paragraph) of the mediation agreement that you assert the education agency has failed to implement.

Upon receipt of a request for enforcement, the OSEP will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the OSEP evidence of compliance, whereupon, the OSEP will determine the implementation of the decision. If it is determined that the district has failed to implement the decision, or part of the decision, the OSEP shall order the district to implement the decision or part of the decision, as appropriate.

Signature: _____
(Person(s) Submitting Request)

Date: _____

To: **Roberta Wohle, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 0862k5-0500

Relationship to Student(s): (Check One)

Parent/Guardian

Attorney

Advocate

From: _____

(Name of person submitting the request)

Address: _____

Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

Please note: the Office of Special Education Programs (OSEP) must have a copy of the ALJ's decision before any action can be taken with respect to a request for enforcement.

Is a copy of the final decision (or Order) issued by the Administrative Law Judge (ALJ) included with this request? Yes No If not, is a copy being sent by separate mailing? Yes No

What is the date of the ALJ's decision? _____

Subsequent to issuance of the decision, have the parties reached any agreements that modify the decision or the terms of the Order? Yes No (If yes, explain below)

Note: 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.

When was the action that you are seeking to enforce directed to occur?

Note: A request for enforcement must be made to the OSEP 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 was required to have occurred. If your request is untimely, the OSEP will not enforce the request.

Are you currently involved in, or have you recently requested, mediation or a due process hearing? ____ Yes ____ No

If you have recently requested mediation or a due process hearing, what is the subject of the disagreement?

Briefly state the specific provision (identify the page and paragraph) of the decision that you assert the education agency has failed to implement.

Upon receipt of a request for enforcement, the OSEP will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the OSEP evidence of compliance, whereupon, the OSEP will determine the implementation of the decision. If it is determined that the district has failed to implement the decision, or part of the decision, the OSEP shall order the district to implement the decision or part of the decision, as appropriate.

Signature: _____
(Person(s) Submitting Request)

PARENT ADDRESS
PARENT PHONE NUMBER
DATE

PRINCIPAL
CHILD'S SCHOOL
ADDRESS

Dear _____ :

I am requesting, within 10 days, a copy of all general and special education records of my child, _____, which are maintained by the school district.

Please include copies of all records related to registration and enrollment, academic performance and grades, State or district-administered standardized tests, general intervention and referral services, special education referrals, evaluations, IEPs and notices, school discipline, remedial and counseling services, health records, and any other records with personally identifiable information.

If the school district charges a fee for this service, please alert me as soon as possible. If you have any questions about my request, contact me at _____.

Thank you.

Sincerely,

PARENT NAME

cc: DIRECTOR OF SPECIAL SERVICES
FOR THE SCHOOL DISTRICT

“U.S.C.” refers to the United States Code and is the cite for all federal statutes, including IDEA and Section 504.

“C.F.R.” refers to the Code of Federal Regulations and is the cite for all federal regulations which implement the federal statutes, including IDEA and Section 504.

“N.J.S.A.” refers to the New Jersey Statutes Annotated and is the cite for all state statutes, including New Jersey’s special education statute.

“N.J.A.C.” refers to the New Jersey Administrative Code and is the cite for all state regulations, including the state regulations which implement IDEA.

1. A list of abbreviations used in this manual can be found in this manual at p. 57.
2. The term “parent” is used throughout this Manual to mean the natural or adoptive parent, legal guardian, foster parent, surrogate parent, 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) and an adult student.
3. In referring to a school-age person (one between the ages of three and 21) who is eligible for special education and related services, federal law uses the term “child with a disability,” 20 U.S.C. § 1401(3), whereas state law uses the term “student with a disability,” N.J.A.C. 6A:14-1.3. For consistency, this manual uses the term “child with a disability,” which includes some students eligible for special education who are adults.
4. 20 U.S.C. § 1400, *et seq.*
5. 34 C.F.R. Part 300.
6. N.J.A.C. 6A:14.
7. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a); N.J.A.C. 6A:14-1.1(b)(1) and 1.3.
8. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8; N.J.A.C. 6A:14-3.5(c).
9. *Id.*
10. N.J.A.C. 6A:14-3.3(b) and (d).
11. N.J.A.C. 6A:16-8.1, *et seq.*
12. 29 U.S.C. § 794.
13. 34 C.F.R. §§ 104.3(j) and 104.33(b).
14. N.J.A.C. 6A:15-1.1, *et seq.*
15. 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a); N
16. 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).
17. 20 U.S.C. § 1401(9)(A)-(D); 34 C.F.R. § 300.17(a)-(d).
18. 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a).
19. 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39.
20. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999).
21. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(i).
22. 20 U.S.C. § 1400(d).
23. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.
24. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a).
25. *Id.*
26. *Irvington Independent Sch. Dist. v. Tatro*, 468 U.S. 883, 884 and 892 (1984); *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66, 85 (1999).
27. 34 C.F.R. § 300.34(c)(5).
28. 20 U.S.C. § 1401(9)(A); 34 C.F.R. § 300.17(a).
29. 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).
30. 34 C.F.R. § 300.115; N.J.A.C. 6A:14-4.2(a)(3).
31. 34 C.F.R. § 300.116(b)(3).
32. 29 U.S.C. § 794; 42 U.S.C. § 12131, *et seq.*; 42 U.S.C. § 12181, *et seq.*
33. *Id.*
34. *Id.*
35. *Id.*
36. 34 C.F.R. § 104.37; 34 C.F.R. §§ 300.107, 300.108 and 300.110; N.J.A.C. 6A:14-4.1(f) and (j) and 4.2(b).
37. 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb); 34 C.F.R. § 300.320(a)(4)(ii); N.J.A.C. 6A:14-3.7(e)(4)(ii).
38. 20 U.S.C. §§ 1400(c)(5)(A), 1414(d)(1)(A)(i)(II)(aa) and 1414(d)(1)(A)(i)(IV)(bb), 34 C.F.R. §§ 300.320(a)(2)(i) and 300.320(a)(4)(ii); N.J.A.C. 6A:14-3.7(e)(3)(i) and (4)(ii).
39. N.J.A.C. 6A:8-1.1(a).
40. N.J.A.C. 6A:8-1.1, *et seq.*
41. N.J.A.C. 6A:14-3.7(e)(2) and 4.7(a).
42. 20 U.S.C. § 1412(a)(16)(A); 34 C.F.R. § 300.160(a); N.J.A.C. 6A:14-4.10(a).
43. 20 U.S.C. § 1414(d)(1)(A)(i)(VI); 34 C.F.R. § 300.320(a)(6); N.J.A.C. 6A:14-3.7(b) and (e)(7).
44. N.J.A.C. 6A:8-5.1(c), 6A:14-3.7(e)(9), 4.10(a)(3) and 4.11(a).
45. N.J.A.C. 6A:14-4.10(a)(3) and 4.11(a); see also, New Jersey Department of Education’s Website at www.nj.gov/education/assessment/hs/index.shtml#sra, which provides information on the SRA.
46. 20 U.S.C. § 1412(a)(16)(C); 34 C.F.R. § 300.320(a)(6)(ii); N.J.A.C. 6A:8-4.1(d)(3) and 4.10(a)(2).
47. 20 U.S.C. § 6301, *et seq.*
48. 34 C.F.R. § 200.13(c)(2)
49. N.J.A.C. 6A:8-5.2(a).
50. N.J.A.C. 6A:8-5.1(c), 5.2 and 6A:14-4.11(a).
51. 20 U.S.C. § 1412(a)(1)(A), (B); 34 C.F.R. § 300.102(a)(3)(i); N.J.A.C. 6A:14-1.1(d) and 1.3
52. 20 U.S.C. § 1412(a)(1)(B); 34 C.F.R. § 300.102(a)(3)(i); N.J.A.C. 6A:14-2.1(a).
53. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.102(a)(3)(iii); N.J.A.C. 6A:14-4.11(b).
54. 20 U.S.C. §§ 1415(b)(6), (e) and (f); 34 C.F.R. §§ 300.506, 300.507 and 300.511; N.J.A.C. 6A:14-4.11(b)(2).
55. 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).
56. 20 U.S.C. § 1412(a); 34 C.F.R. §§ 300.100; N.J.A.C. 6A:14-1.1(d).
57. N.J.S.A. 18A:38-1; N.J.A.C. 6A:22-3.1(a)(5).
58. N.J.S.A. 18A:7B-12(b); N.J.A.C. 6A:23-5.2(a)(2).
59. N.J.S.A. 18A:38-1(e) and 38-2; N.J.A.C. 6A:14-8.1(g)

- and 8.3(a).
60. N.J.S.A. 18A:7B-12(d).
 61. 20 U.S.C. § 1412(a)(11); 34 C.F.R. § 300.149.
 62. *Id.*
 63. 20 U.S.C. § 1413(g).
 64. N.J.A.C. 6A:14-3.1(a).
 65. N.J.S.A. 18A:46-5.1; N.J.A.C. 6A:14-3.1(b).
 66. N.J.A.C. 6A:14-3.6(c).
 67. N.J.A.C. 6A:14-3.1(b).
 68. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321; N.J.A.C. 6A:14-2.3(k)(2) and 3.3(e)(1)(iv).
 69. N.J.A.C. 6A:14-3.1(d).
 70. 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321; N.J.A.C. 6A:14-3.1(a).
 71. N.J.A.C. 6A:14-3.3(e).
 72. N.J.A.C. 6A:14-3.2(a).
 73. *Id.*
 74. N.J.A.C. 6A:14-3.2(c).
 75. N.J.A.C. 6A:14-3.2(b).
 76. 20 U.S.C. §§ 1412(a)(3)(A) and 1412(a)(10)(A)(ii)(I); 34 C.F.R. §§ 300.111(a) and 300.131(a); N.J.A.C. 6A:14-3.3.
 77. *Id.*; see also *W.B. v. Matula*, 67 F.3d 484, 492 (3d Cir. 1995).
 78. N.J.A.C. 6A:14-3.3(a).
 79. 34 C.F.R. § 300.111(c)(2); N.J.A.C. 6A:14-3.3(a)(1).
 80. 34 C.F.R. § 300.111(c)(1); N.J.A.C. 6A:14-3.3(a)(1).
 81. N.J.A.C. 6A:14-3.3(a)(3)(ii).
 82. *Hicks v. Purchase Line Sch. Dist.*, 251 F.Supp.2d 1250, 1254 (W.D.Pa. 2003).
 83. N.J.A.C. 6A:14-3.3(a)(3)(i) and 3.3(b).
 84. N.J.A.C. 6A:14-3.3(d)(1).
 85. N.J.A.C. 6A:14-3.3(d).
 86. N.J.A.C. 6A:14-3.3(c).
 87. N.J.A.C. 6A:14-3.3(c)(1).
 88. N.J.A.C. 6A:14-3.3(a)(2) (ii).
 89. N.J.A.C. 6A:14-3.3(a)(2)(i).
 90. 20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b); N.J.A.C. 6A:14-3.3(a)(3)(ii) and 3.3(d)(1).
 91. N.J.A.C. 6A:14-3.3(d)(1).
 92. N.J.A.C. 6A:14-2.3(d).
 93. N.J.A.C. 6A:14-3.3(e).
 94. N.J.A.C. 6A:14-3.3(e)(3) and 3.3(e)(4).
 95. N.J.A.C. 6A:14-3.3(e).
 96. *Id.*
 97. N.J.A.C. 6A:14-2.3(f) and (h).
 98. *Id.*
 99. N.J.A.C. 6A:14-3.4(e)(3).
 100. N.J.A.C. 6A:14-3.3(f).
 101. 20 U.S.C. § 1414(a)(1)(D)(i)(D); 34 C.F.R. § 300.300(a)(1)(i); N.J.A.C. 6A:14-3.4(b).
 102. 34 C.F.R. § 300.9(a); N.J.A.C. 6A:14-1.3.
 103. 34 C.F.R. § 300.9(b); N.J.A.C. 6A:14-1.3.
 104. *Id.*
 105. 34 C.F.R. § 300.9(c)(1); N.J.A.C. 6A:14-1.3.
 106. N.J.A.C. 6A:14-2.3(d).
 107. 34 C.F.R. § 300.301(c)(1)(ii); N.J.A.C. 6A:14-3.4(e).
 108. 34 C.F.R. §§ 300.9 and 300.300; N.J.A.C. 6A:14-1.3 and 2.3(e).
 109. 20 U.S.C. § 1414(a)(1)(D)(ii)(D); 34 C.F.R. § 300.300(a)(3)(i); N.J.A.C. 6A:14-3.4(c).
 110. 34 C.F.R. § 300.300(a)(3)(ii).
 111. 34 C.F.R. § 300.300(a)(1)(iii) and (d)(5).
 112. N.J.A.C. 6A:14-2.3(a)(1) and 3.4(c).
 113. 34 C.F.R. § 300.301(d)(1); N.J.A.C. 6A:14-3.4(e)(1).
 114. 34 C.F.R. § 300.301(d)(2) and (e); N.J.A.C. 6A:14-3.4(e)(2).
 115. 20 U.S.C. §§ 1415(b)(6), (e) and (f); 34 C.F.R. §§ 300.506(a), 300.507(a) and 300.511(a); N.J.A.C. 6A:14-2.6(a) and 2.7(a).
 116. See N.J.A.C. 6A:14-3.6.
 117. See N.J.A.C. 6A:14-3.5(c)(4).
 118. N.J.A.C. 6A:14-3.3(e)(5).
 119. N.J.A.C. 6A:14-3.6(e).
 120. 20 U.S.C. § 1412(a)(9); 34 C.F.R. § 300.124; N.J.A.C. 6A:14-3.3(e)(1).
 121. *Id.*
 122. 20 U.S.C. § 1412(a)(9); 34 C.F.R. § 300.124(b); N.J.A.C. 6A:14-3.3(e)(2).
 123. *Id.*
 124. N.J.A.C. 6A:14-3.3(e)(2)(i).
 125. 20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. 300.301(a); N.J.A.C. 6A:14-3.4(f).
 126. N.J.A.C. 6A:14-3.5(c)(4).
 127. 34 C.F.R. § 300.15.
 128. N.J.A.C. 6A:14-3.4(h).
 129. 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).
 130. 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(1)(ii); N.J.A.C. 6A:14-2.5(a)(1).
 131. 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).
 132. 20 U.S.C. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i); N.J.A.C. 6A:14-2.5(b)(1)(i).
 133. 20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); N.J.A.C. 6A:14-2.5(b)(1)(ii).
 134. 20 U.S.C. § 1414(b)(3)(A)(iii); 34 C.F.R. § 300.304(c)(3); N.J.A.C. 6A:14-2.5(b)(5).
 135. N.J.A.C. 6A:14-3.3(g) and (h).
 136. N.J.A.C. 6A:14-3.4(j).
 137. N.J.A.C. 6A:14-3.3(e).
 138. N.J.A.C. 6A:14-3.3(e) and 3.4(a)(2).
 139. 20 U.S.C. § 1414(c)(1)(A)(i)-(iii); 34 C.F.R. § 300.305(a)(1)(i)-(iii); N.J.A.C. 6A:14-3.4(a)(1).
 140. 20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. § 300.301(a).
 141. 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); N.J.A.C. 6A:14-2.5(b)(3).
 142. N.J.A.C. 6A:14-3.4(a)(1) and 3.4(j).
 143. N.J.A.C. 6A:2.5(b)(6) and 3.4(f).
 144. N.J.A.C. 6A:14-3.4(a)(3).
 145. N.J.A.C. 6A:14-3.5(c)(2).
 146. N.J.A.C. 6A:14-3.5(c)(14).
 147. N.J.A.C. 6A:14-3.5(c)(9).
 148. 34 C.F.R. § 300.304(c)(6); N.J.A.C. 2.5(b)(7).
 149. 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); N.J.A.C. 6A:14-2.5(a)(2).
 150. 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-2.5(a).
 151. 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-2.5(a)(1)(i).
 152. 20 U.S.C. §§ 1414(a)(1)(A) and 1414(b)(3)(A)(i)-(v); 34 C.F.R. §§ 300.301(a) and 300.304(c)(1)(i)-(v); N.J.A.C. 6A:14-2.5(a)(3) and 3.4(f).
 153. 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. §§ 300.304(b)(2) and (c)(2); N.J.A.C. 6A:14-2.5(a)(2).
 154. 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-3.4(f)(4).
 155. 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-2.5(a)1 and 3.4(f)(4).
 156. N.J.A.C. 6A:14-3.4(f)(4).
 157. 20 U.S.C. § 1414(b)(2)(A)(ii); 34 C.F.R. §

- 300.304(b)(1)(ii); N.J.A.C. 6A:14-2.5(a)(1)(ii).
158. 20 U.S.C. § 1414(c)(1)(B)(iv); 34 C.F.R. § 300.305(a)(2)(iv); N.J.A.C. 6A:14-2.5(a)(2).
159. N.J.A.C. 6A:14-3.4(f)(5).
160. N.J.A.C. 6A:14-3.4(h).
161. N.J.A.C. 6A:14-3.4(h).
162. N.J.A.C. 6A:14-3.4(h)(1).
163. N.J.A.C. 6A:14-3.4(h)(5).
164. *Id.*
165. N.J.A.C. 6A:14-3.5(a).
166. 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-2.5(a)(1), 2.5(c)(5) and 3.4(i).
167. 20 U.S.C. § 1414(b)(6)(A); 34 C.F.R. § 300.307(a)(1).
168. N.J.A.C. 6A:14-3.5(c)(12)(i).
169. 34 C.F.R. § 300.309(b)(1) and (2).
170. 34 C.F.R. § 300.8(a) and (c)(1); N.J.A.C. 6A:14-3.5(c)(12).
171. 34 C.F.R. § 300.310(a); N.J.A.C. 6A:14-3.4(f)(4)(i)(1).
172. N.J.A.C. 6A:14-2.3(k)(1)(ii) and 6A:14-3.5(a).
173. 34 C.F.R. § 300.311(a)(1)-(4); N.J.A.C. 6A:14-3.4(h)(4)(i)-(x).
174. N.J.A.C. 6A:14-3.5(c)(12)(i) and (ii).
175. N.J.A.C. 6A:14-3.5(c)(12)(iv).
176. 34 C.F.R. § 300.311(a)(7)(ii)(A)-(C).
177. N.J.A.C. 6A:14-3.6(b) and 3.4(g).
178. N.J.A.C. 6A:14-3.4(g)(1).
179. N.J.A.C. 6A:14-3.4(g)(2).
180. N.J.A.C. 6A:14-3.4(g)(3).
181. N.J.A.C. 6A:14-3.4(g)4.
182. N.J.A.C. 6A:14-3.6(e).
183. 20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a); N.J.A.C. 6A:14-3.8(a).
184. 20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); N.J.A.C. 6A:14-3.8(a).
185. 20 U.S.C. § 1414(a)(2)(B)(i); 34 C.F.R. § 300.303(b)(1); N.J.A.C. 6A:14-3.8(a).
186. 34 C.F.R. § 104.35(a).
187. 34 C.F.R. § 300.305(e)(1) and (2); N.J.A.C. 6A:14-3.8(d).
188. 20 U.S.C. § 1414(c)(1)(A)(i)-(iii); 34 C.F.R. § 300.305(a)(1) and (2); N.J.A.C. 6A:14-3.8(b)(1) and (2).
189. 20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d)(1); N.J.A.C. 6A:14-3.8(b)(3).
190. 20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.308(a).
191. 20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.308(a); N.J.A.C. 6A:14-3.8(b)(1).
192. 20 U.S.C. § 1414(c)(1)(B)(i)-(iv); 34 C.F.R. § 300.305(a)(2)(B)(i)-(iv); N.J.A.C. 6A:14-3.8(b)(2)(i)-(iv).
193. N.J.A.C. 6A:14-3.8(e).
194. 20 U.S.C. § 1415(b)(5) and (6); 34 C.F.R. § 300.506 and 300.507; N.J.A.C. 6A:14-2.6 and 2.7.
195. 34 C.F.R. § 300.502(b).
196. *Id.*
197. 20 U.S.C. § 1414(c)(1)(A)(i); 34 C.F.R. § 300.305(a)(1)(i); N.J.A.C. 6A:14-3.4(a)(1) and 3.8(b)(1)(ii).
198. 34 C.F.R. § 300.502(c)(1) and (2); N.J.A.C. 6A:14-2.5(c)(5).
199. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) and (2); N.J.A.C. 6A:14-2.5(c).
200. 34 C.F.R. § 300.502(b)(4); N.J.A.C. 6A:14-2.5(c)(6).
201. 34 C.F.R. § 300.502(a)(2); N.J.A.C. 6A:14-2.5(c)(2)(i).
202. N.J.A.C. 6A:14-2.5(c)(3) and (4).
203. N.J.A.C. 6A:14-2.5(c)(2)(i) and (4).
204. 34 C.F.R. § 300.502(e).
205. 34 C.F.R. § 300.502(e).
206. 34 C.F.R. § 300.502(a)(3)(i).
207. N.J.A.C. 6A:14-2.5(c)(1).
- 208.
- 209.
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211. 34 C.F.R. § 300.502(b)(1) and (2); N.J.A.C. 6A:14-2.5(c)(2)(i) and (ii).
212. *Id.*
213. 34 C.F.R. § 300.502(b)(5).
214. 34 C.F.R. § 300.502(e)(1); N.J.A.C. 6A:14-2.5(c)(3)(i).
215. N.J.A.C. 6A:14-2.5(c)(7).
216. September 2004 Memo In Re Independent Evaluations from Barbara Gantwerk, Director of New Jersey Office of Special Education Programs, to Chief School Administrators.
217. 34 C.F.R. § 300.502(d); N.J.A.C. 1:6A-14.4(a) and 6A:14-2.5(c)(8).
218. N.J.A.C. 1:6A-14.4(a).
219. *Id.*
220. 34 C.F.R. § 300.502(d); N.J.A.C. 1:6A-14.4(a) and 6A:14-2.5(c)(8).
221. 20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. § 300.306(a)(1); N.J.A.C. 6A:14-2.3(k)(1) and 3.5(a).
222. N.J.A.C. 6A:14-3.5(c)(4) and 3.6(c).
223. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8; N.J.A.C. 6A:14-3.5(c).
224. 34 C.F.R. § 300.308; N.J.A.C. 6A:14-3.5(c).
225. 20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b)(1); N.J.A.C. 6A:14-3.5(b).
226. 20 U.S.C. §§ 1415(a)(3) and (c)(1)(C); 34 C.F.R. §§ 300.503(a) and (b)(4); N.J.A.C. 6A:14-2.3(f) and (g)6.
227. 20 U.S.C. § 1414(a)(1)(D)(II); 34 C.F.R. § 300.300(b)(1); N.J.A.C. 6A:14-2.3(a)2.
228. 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).
229. 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.
230. 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).
231. 20 U.S.C. § 1414(d)(1)(A)(i)(D)-(IV); 34 C.F.R. § 300.320(a)(1)-(4); N.J.A.C. 6A:14-3.7(e)(1)-(4).
232. 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).
233. 20 U.S.C. § 1400(c)(5)(A).
234. 20 U.S.C. § 1414(d)(1)(A)(i)(D)-(IV); 34 C.F.R. § 300.320(a)(1)-(4); N.J.A.C. 6A:14-3.7(e)(1)-(4).
235. 20 U.S.C. § 1412(a)(16), 1414(d)(1)(A)(i)(VI); 34 C.F.R. § 300.320(a)(6); N.J.A.C. 6A:14-1.2(b)(1)5 and 3.7(e)(7).
236. 20 U.S.C. §§ 1401(34) and 1414(d)(1)(A)(i)(VIII); 34 C.F.R. §§ 300.43 and 300.320(b); N.J.A.C.

- 6A:14(e)(11).
237. N.J.A.C. 6A:14-4.3(a).
238. N.J.A.C. 6A:14-4.2(a)(9).
239. N.J.A.C. 6A:14-4.2(a)(2).
240. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), 1414(d)(3)(A) and 1414(d)(3) (B); 34 C.F.R. §§ 300.320(a)(1)-(4), 300.324(a)(1) and 300.324(a)(2) ; N.J.A.C. 6A:14-3.7(c) and (e)(1)-(4).
241. 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).
242. 20 U.S.C. § 1401(14); 34 C.F.R. § 300.22; N.J.A.C. 6A:14-3.7(b).
243. 34 C.F.R. § 300.323(c); N.J.A.C. 6A:14-3.7(a).
244. 20 U.S.C. §§ 1414(e) and 1415(b)(1); 34 C.F.R. §§ 300.322(a)(2) and 300.501(b); N.J.A.C. 6A:14-2.3(k)(4).
245. 20 U.S.C. §§ 1414(e) and 1415(b)(1); 34 C.F.R. § 300.501(c); N.J.A.C. 6A:14-2.3(k)(7).
246. 34 C.F.R. §§ 300.501(b)(2)(1)-(7); N.J.A.C. 6A:14-2.3(k)(5).
247. 20 U.S.C. §§ 1415(b)(3) and (c)(1)(C); 34 C.F.R. §§ 300.503(a) and (b)(4); N.J.A.C. 6A:14-2.3(f) and (g)(6).
248. 20 U.S.C. § 1415(b)(4); 34 C.F.R. § 300.503(c); N.J.A.C. 6A:14-2.3(g) and 2.4.
249. 20 U.S.C. § 1415(b); 34 C.F.R. §§ 300.322(a)(1) and 300.501(b); N.J.A.C. 6A:14-2.3(k)(3).
250. 34 C.F.R. § 300.501(c)(3); N.J.A.C. 6A:14-2.3(k)(6).
251. 20 U.S.C. §§ 1414(d)(1)(C)(i) and (iii); 34 C.F.R. § 300.321(e)(1); N.J.A.C. 6A:14-2.3(k)(9).
252. 20 U.S.C. §§ 1414(d)(1)(C)(ii) and (iii); 34 C.F.R. § 300.321(e)(2); N.J.A.C. 6A:14-2.3(k)(10).
253. N.J.A.C. 6A:14-2.3(k)(9)(i).
254. N.J.A.C. 6A:14-2.3(k)(8).
255. 34 C.F.R. § 300.322(e); N.J.A.C. 6A:14-2.4(a).
256. 34 C.F.R. § 300.322(e); N.J.A.C. 6A:14-2.4(a)(1).
257. N.J.A.C. 6A:14-3.7(l).
258. N.J.A.C. 6A:14-3.7(m).
259. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a); N.J.A.C. 6A:14-2.3(f), 3.7(m).
260. 34 C.F.R. 300.322(f).
261. 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).
262. N.J.A.C. 6A:14-2.3(h)(2).
263. N.J.A.C. 6A:14-2.3(h)(3)(ii).
264. *Id.*
265. N.J.A.C. 6A:14-2.3(h)(2).
266. 20 U.S.C. § 1414(d)(1)(A)(i)(D); 34 C.F.R. § 300.320(a)(1); N.J.A.C. 6A:14-3.7(e)(1).
267. 20 U.S.C. § 1414(d)(1)(A)(i)(D); 34 C.F.R. § 300.320(a)(2); N.J.A.C. 6A:14-3.7(e)(2), (3).
268. N.J.A.C. 6A:14-3.7(e)(2).
269. *Id.*
270. N.J.A.C. 6A:14-3.7(e)(3).
271. 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)(15).
272. 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).
273. 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).
274. *Id.*
275. 20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); N.J.A.C. 6A:14-3.7(e)(8).
276. 20 U.S.C. § 1414(d)(1)(A)(i)(V); 34 C.F.R. § 300.320(a)(5); N.J.A.C. 6A:14-3.7(e)(6).
277. N.J.A.C. 6A:14-3.7(e)(5).
278. N.J.A.C. 6A:14-3.7(e)(17).
279. 20 U.S.C. § 1414(d)(1)(A)(i)(VI); 34 C.F.R. § 300.320(a)(6); N.J.A.C. 6A:14-3.7(e)(7)(i).
280. N.J.A.C. 6A:14-3.7(e)(10).
281. N.J.A.C. 6A:14-3.7(e)(9).
282. N.J.A.C. 6A:14-3.7(e)(11).
283. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII); 34 C.F.R. § 300.320(b); N.J.A.C. 6A:14-3.7(e)(12).
284. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(cc); 34 C.F.R. § 300.320(c); N.J.A.C. 6A:14-3.7(e) (14).
285. N.J.A.C. 6A:14-3.7(c).
286. N.J.A.C. 6A:14-3.7(d)(1) and (2).
287. N.J.A.C. 6A:14-3.7(d)(3).
288. N.J.A.C. 6A:14-3.7(d)(4).
289. N.J.A.C. 6A:14-3.7(i).
290. N.J.A.C. 6A:14-2.3(h)(5)(i).
291. 34 C.F.R. § 300.324(b)(1)(i).
292. 34 C.F.R. § 300.324(b)(1)iii; N.J.A.C. 6A:14-3.7(j).
293. 34 C.F.R. § 300.323(c)(2).
294. N.J.A.C. 6A:14-3.4(e).
295. N.J.A.C. 6A:14-3.7(a)(1).
296. N.J.A.C. 6A:14-3.7(a)(3).
297. 20 U.S.C. § 1414(d)(2)(C)(i); 34 C.F.R. 300.323(e) and (f); 71 FR 156, P. 46681, August 14, 2006 (analysis of comments and changes); N.J.A.C. 6A:14-4.1(g).
298. 34 C.F.R. § 300.323(e)(1); N.J.A.C. 6A:14-4.1(g)(1).
299. 34 C.F.R. § 300.323(e)(1); N.J.A.C. 6A:14-4.1(g)(1).
300. *S.K. v. Hanover Park Reg'l High Sch. Dist. Bd. of Educ.*, 2002 WL 31269565, OAL Dkt. No. EDS 7575-02 (Sept. 23, 2003) (under N.J.A.C. 6A:14-4.1(g) (June 5, 2000), relief analogous to “stay put” is available when a child transfers from one school district in the State to another); *Michael C. v. Radnor Twp. Sch. Dist.*, 202 F3d 642 (3d Cir. 2000), citing, Inquiry of Reiser, OSEP Policy Letter, July 17, 1986 , reprinted in 2 EHLR 211:403 (USDE 1986) (OSEP determined that “stay put” applied when a student transfers intrastate).
301. 34 C.F.R. 300.323(f); N.J.A.C. 6A:14-4.1(g)(2).
302. See discussion on “stay put” in this manual at p. *, but see 71 FR 156, P. 46681, August 14, 2006 (analysis of comments and changes).
303. 34 C.F.R. Part 300, Appendix A, Q&A 14 (2000); see also 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.”).
304. 20 U.S.C. §§ 1401(29) and 1414(d)(1)(A)(i)(II); 34 C.F.R. §§ 300.39(a)(1), 300.39 (b)(3), 300.320 and Appendix A, Q&A 14 (2000); N.J.A.C. 6A:14-1.3 (definitions of IEP and special education), 3.7(e)(2) and 3.7(e) (3).
305. 20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); N.J.A.C. 6A:14-3.7(e)(8).
306. 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).
307. N.J.A.C. 6A:14-3.7(i).
308. 34 C.F.R. § 300.116(a)(1).
309. 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c).
310. N.J.A.C. 6A:14-2.3(h)(2).

311. N.J.A.C. 6A:14-4.1(k) and 6A:14-7.5(b)(2).
312. N.J.A.C. 6A:14-2.3(h)(3)(ii).
313. N.J.A.C. 6A:14-2.3(h)(3).
314. 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).
315. N.J.A.C. 6A:14-1.3(definition of IEP).
316. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); N.J.A.C. 6A:14-4.2.
317. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 - 117; N.J.A.C. 6A:14-4.2(a)(1).
318. N.J.A.C. 6A:14-3.7(e)(17).
319. N.J.A.C. 6A:14-4.2(a)(8)(i).
320. N.J.A.C. 6A:14-4.2(a)(9).
321. N.J.A.C. 6A:14-4.2(a)(8)(ii).
322. N.J.A.C. 6A:14-4.2(a)(8)(iii); *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204 (3d Cir. 1993).
323. N.J.A.C. 6A:14-4.3(a).
324. N.J.A.C. 6A:14-4.3(b).
325. N.J.A.C. 6A:14-4.8(a).
326. N.J.A.C. 6A:14-4.8(a)(4).
327. N.J.A.C. 6A:14-4.8(a)(1), (2).
328. 20 U.S.C. § 1401(9)(A), (29); 34 C.F.R. §§ 300.17, 300.39(a)(1) and 300.146(a)(2); N.J.A.C. 6A:14-4.2.
329. N.J.A.C. 6A:14-4.6.
330. N.J.A.C. 6A:14-4.7(a).
331. N.J.A.C. 6A:14-4.7(a).
332. N.J.A.C. 6A:14-4.7(b)(e).
333. N.J.A.C. 6A:14-4.6(m) and 4.7(e).
334. *Id.*
335. N.J.A.C. 6A:14-4.7(a)(2) as amended July 26, 2007. See NJDOE Memorandum dated August 27, 2007 available at <http://www.nj.gov/education/specialized/memos/082707age.pdf>.
336. N.J.A.C. 6A:14-4.6(k) and 4.7(a)(2).
337. N.J.A.C. 6A:14-4.9(a).
338. N.J.A.C. 6A:14-4.9(d).
339. 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); N.J.A.C. 6A:14-2.10(b).
340. 34 C.F.R. § 300.148(c); N.J.A.C. 6A:14-2.10(b).
341. 20 U.S.C. §§ 1412(a)(10)(C)(iii)(D)(aa) and (bb); 34 C.F.R. § 300.148(d)(1); N.J.A.C. 6A:14-2.10(c)(1), (2). See also 20 U.S.C. § 1412(a)(10)(C)(iv); 34 C.F.R. § 300.1148(e); N.J.A.C. 6A:14-2.10(d) for exceptions to the general notice rule.
342. 20 U.S.C. §§ 1412(a)(10)(C)(iii)(D)(aa) and (bb); 34 C.F.R. §§ 300.148(d)(1)(i) and (ii); N.J.A.C. 6A:14-2.10(c)(1) and (2).
343. 20 U.S.C. § 1412(a)(10)(C)(iii); 34 C.F.R. § 300.148(d); N.J.A.C. 6A:14-2.10(c).
344. 20 U.S.C. § 1415; 34 C.F.R. §§ 300.500 - 520; N.J.A.C. 6A:14-2.6 and 2.7.
345. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a).
346. 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a)(1); N.J.A.C. 6A:14-2.3(f), 2.3 (h)(1) and 2.3 (h) (2).
347. N.J.A.C. 6A:14-2.3(h)(5).
348. N.J.A.C. 6A:14-2.3(h)(5)(i).
349. 20 U.S.C. § 1415(b)(4); 34 C.F.R. § 300.503(c); N.J.A.C. 6A:14-2.3(g) and 2.4.
350. 20 U.S.C. § 1415(d)(2); 34 C.F.R. §§ 300.503(c)(1)(ii) and (2); N.J.A.C. 6A:14-2.3(g).
351. 34 C.F.R. § 300.503(c)(2).
352. 20 U.S.C. §§ 1415(c)(1)(A), (B) and (E); 34 C.F.R. §§ 300.503(b)(1)- (3) and (6); N.J.A.C. 6A:14-2.3(g)(1)-(4).
353. 20 U.S.C. § 1415(c)(1)(C); 34 C.F.R. § 300.503(b)(4); N.J.A.C. 6A:14-2.3(g)(6)-(7).
354. 20 U.S.C. § 1415(c)(1)(D); 34 C.F.R. § 300.503(b)(5); N.J.A.C. 6A:14-2.3(g)(6).
355. 34 C.F.R. § 300.504(a); N.J.A.C. 6A:14-2.3(g)(7).
356. 34 C.F.R. § 300.504(a)(2); N.J.A.C. 6A:14-2.3(g)(7)(ii)-(iii).
357. 34 C.F.R. §§ 300.504(a)(3) and 300.530(h).
358. N.J.A.C. 6A:14-2.3(i).
359. N.J.A.C. 6A:14-2.1(b).
360. 20 U.S.C. §§ 1415(b)(5), (b)(6)(A), (e) and (f); 34 C.F.R. §§ 300.151-153, 300.506(a) and 300.507(a)(1); N.J.A.C. 6A:14-2.6(a), 2.7(a) and 9.2.
361. *Id.*
362. 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).
363. N.J.A.C. 6A:14-2.7(r).
364. N.J.A.C. 6A:14-2.7(s).
365. *Id.*
366. 34 C.F.R. § 300.515(a); N.J.A.C. 6A:14-2.7(j).
367. 20 U.S.C. § 1415(h)(4); 34 C.F.R. § 300.512(a)(5).
368. 34 C.F.R. § 300.514(a); N.J.A.C. 6A:14-2.7(l).
369. *Id.*
370. 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) and (d); N.J.A.C. 6A:14-2.7(u).
371. N.J.A.C. 6A:14-2.7(t).
372. *Id.*
373. 20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); N.J.A.C. 6A:14-2.7(v)(1).
374. 20 U.S.C. § 1415(b)(6), (f)(1)(A) and (k)(3)(a); 34 C.F.R. §§ 300.507(a), 300.511(a) and 300.532(a); N.J.A.C. 6A:14-2.7(a) and (m).
375. 20 U.S.C. § 1415(f)(3)(C); 34 C.F.R. § 300.511(e); N.J.A.C. 6A:14-2.7(a)(1).
376. 20 U.S.C. § 1415(f)(3)(D); 34 C.F.R. § 300.511(f); N.J.A.C. 6A:14-2.7(a)(1)(i) and (ii).
377. N.J.A.C. 6A:14-2.7(b).
378. N.J.A.C. 6A:14-2.7(b).
379. 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a); N.J.A.C. 6A:14-2.7(n).
380. Memorandum from Barbara Gantwerk, then-director of NJDOE-OSEP, dated August 21, 2001.
381. N.J.A.C. 6A:14-2.7(c).
382. 20 U.S.C. § 1415(b)(7)(A)(i); 34 C.F.R. § 300.508(a)(2); N.J.A.C. 6A:14-2.7(c).
383. 20 U.S.C. § 1415(b)(7)(A)(ii)(I); 34 C.F.R. §§ 300.508(b)(1)-(3); N.J.A.C. 6A:14-2.7(c).
384. 20 U.S.C. § 1415(b)(7)(A)(ii)(III), (IV); C.F.R. § 300.508(b)(5), (6); N.J.A.C. 6A:14-2.7(c).
385. 20 U.S.C. § 1415(c)(2)(B)(i)(D); 34 C.F.R. § 300.508(e)(1); N.J.A.C. 6A:14-2.7(e).
386. 20 U.S.C. §§ 1415(c)(2)(B)(i)(D)(aa)-(dd); C.F.R. § 300.508(e)(1)(i)-(iv); N.J.A.C. 6A:14-2.7(e)(1)-(4).
387. 20 U.S.C. § 1415(c)(2)(B)(ii); 34 C.F.R. § 300.508(f); N.J.A.C. 6A:14-2.7(d).
388. 20 U.S.C. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d)(1); N.J.A.C. 6A:14-2.7(f).
389. 20 U.S.C. §§ 1415(c)(2)(A), and (C); 34 C.F.R. § 300.508(d)(1); N.J.A.C. 6A:14-2.7(f).
390. 20 U.S.C. § 1415(c)(2)(D); 34 C.F.R. § 300.508(d)(2); N.J.A.C. 6A:14-2.7(f)(1).
391. N.J.A.C. 6A:14-2.7(f)(2).
392. N.J.A.C. 6A:14-2.7(f)(2).

393. 20 U.S.C. §§ 1415(f)(1)(B)(i) and (i)(IV); 34 C.F.R. §§ 300.510(a)(1) and (3); N.J.A.C. 6A:14-2.7(h), (h)(8) and (h)(9).
394. N.J.A.C. 6A:14-2.7(h)(8)(i) and (9)(i).
395. N.J.A.C. 6A:14-2.7(h)(9)(ii)- and (iii).
396. 20 U.S.C. § 1415(f)(1)(B)(i)(D); 34 C.F.R. § 300.510(a)(1); N.J.A.C. 6A:14-2.7(h)(2).
397. 20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1); N.J.A.C. 6A:14-2.7(h)(4)and (5).
398. 20 U.S.C. § 1415(f)(1)(B)(i) and (i)(II); 34 C.F.R. § 300.510(a)(1) and (1)(i); N.J.A.C. 6A:14-2.7(h)and (h)(1).
399. 20 U.S.C. § 1415(f)(1)(B)(i)(III); 34 C.F.R. § 300.510(a)(1)(ii); N.J.A.C. 6A:14-2.7(h)(1)(i).
400. N.J.A.C. 6A:14-2.7(h)(1)(ii).
401. N.J.A.C. 6A:14-2.7(h)(3).
402. 20 U.S.C. § 1415(f)(1)(B)(iii)(I); 34 C.F.R. § 300.510(d)(1); N.J.A.C. 6A:14-2.7(h)(6).
403. 20 U.S.C. § 1415(f)(1)(B)(iv); 34 C.F.R. § 300.510(e); N.J.A.C. 6A:14-2.7(h)(6)(i).
404. 20 U.S.C. § 1415(f)(1)(B)(iii)(II); 34 C.F.R. § 300.510(d)(2); N.J.A.C. 6A:14-2.7(h)6(ii) and (iii).
405. N.J.A.C. 6A:14-2.7(h)(10).
406. 34 C.F.R. § 300.510(b)(5); N.J.A.C. 6A:14-2.7(h)(7).
407. 34 C.F.R. § 300.510(b)(4).
408. 20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(c); N.J.A.C. 6A:14-2.7(h)(4), (5), (9)(iii),and (10).
409. 34 C.F.R. § 300.515(a); N.J.A.C. 6A:14-2.7(j).
410. 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(1); N.J.A.C. 6A:14-2.7(o)(1).
411. 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2); N.J.A.C. 6A:14-2.7(o)(2)(ii) and (iii).
412. N.J.A.C. 6A:14-2.7(h)(2), (h)(5) and (o)(2)(iii).
413. N.J.A.C. 6A:14-2.7(o)(3).
414. 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2); N.J.A.C. 6A:14-2.7(o)(2)(ii) and (4).
415. N.J.A.C. 1:6A-14.2(d)(1).
416. 20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 300.512(b)(1); N.J.A.C. 1:6A-10.1(a) and (b).
417. N.J.A.C. 1:6A-10.1(d).
418. 20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. §§ 300.512(a)(3) and (b)(2); N.J.A.C. 1:6A-10.1(c).
419. N.J.A.C. 1:6A-14.2(d)(1).
420. N.J.S.A. 18A:46-1.1. See also NJDOE guidance dated January 28, 2008, soon to appear at <http://www.nj.gov/education/specialed/>.
421. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Lascari v. Bd. of Educ.*, 116 N.J. 30 (1989); *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204 (3d Cir. 1993).
422. 20 U.S.C. § 1415(f)(3)(A)(i); 34 C.F.R. § 300.511(c)(1)(i).
423. 34 C.F.R. § 300.515(d).
424. 20 U.S.C. § 1415(h)(3); 34 C.F.R. § 300.512(a)(4).
425. 20 U.S.C. § 1415(f)(2)(A); 34 C.F.R. § 300.512(b)(1); N.J.A.C. 1:6A-10.1(a) and (b).
426. 20 U.S.C. § 1415(h)(1); 34 C.F.R. § 300.512(a)(1).
427. 20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.512(a)(2).
428. 20 U.S.C. § 1415(f)(2)(B); 34 C.F.R. § 300.512(b)(2); N.J.A.C. 1:6A-10.1(c).
429. 20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.512(a)(2).
430. 20 U.S.C. § 1415(h)(4); 34 C.F.R. § 300.512(a)(5).
431. 34 C.F.R. § 300.515(a); N.J.A.C. 6A:14-2.7(j).
432. N.J.A.C. 6A:14-2.7(l), 1:6A-18.4(b).
433. N.J.A.C. 6A:14-2.7(s).
434. N.J.A.C. 6A:14-2.7(r) and (s).
435. N.J.A.C. 6A:14-2.7(r) and (s).
436. N.J.A.C. 6A:14-2.7(s).
437. *Id.*
438. N.J.A.C. 6A:14-2.7(r)(1).
439. N.J.A.C. 6A:14-2.7(s)(1).
440. N.J.A.C. 6A:14-2.7(r)(1)(iii).
441. *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 864 (3d Cir. 1996), accord *Honig v. Doe*, 484 U.S. 305, 328 (1988).
442. *Id.*
443. 20 U.S.C. § 1415(i)(2)(C)(iii).
444. 20 U.S.C. § 1415(i)(2)(A).
445. 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1); N.J.A.C. 6A:14-2.7(k).
446. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); N.J.A.C. 6A:14-2.7(k).
447. *M.C. v. Cent. Reg'l Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996).
448. *W.B. v. Matula*, 67 F.3d 484 (3d Cir. 1995).
449. See, e.g., *P.N. v. Clementon Bd. of Educ.*, 442 F.3d 848 (3d Cir. 2006), *cert. denied*, ___ U.S. ___, 127 S.Ct. 189 (2006).
450. 20 U.S.C. § 1415(e); 34 C.F.R. § 300.506; N.J.A.C. 6A:14-2.6(a).
451. 20 U.S.C. § 1415(e)(1); 34 C.F.R. § 300.506(a); N.J.A.C. 6A:14-2.7(g).
452. N.J.A.C. 6A:14-2.6(a)(2) and 2.7(h)(8).
453. 20 U.S.C. § 1415(e)(2)(A); 34 C.F.R. § 300.506(b)(1), (2); N.J.A.C. 6A:14-2.6(a), (b).
454. 20 U.S.C. § 1415(e)(2)(A)(iii); 34 C.F.R. § 300.506(b)(1)(iii), (4).
455. N.J.A.C. 6A:14-2.6(d)(1) and (2).
456. 20 U.S.C. §§ 1415(e)(2)(A)(ii) and (E); 34 C.F.R. § 300.506(b)(1)(ii); N.J.A.C. 6A:14-2.6(a)(1) and (d)(3).
457. 20 U.S.C. § 1415(e)(2)(E); 34 C.F.R. § 300.506(b)(5); N.J.A.C. 6A:14-2.6(d)(5).
458. 20 U.S.C. § 1415(e)(2)(A)(iii); 34 C.F.R. § 300.506(c)(1); N.J.A.C. 6A:14-2.6(d)(4).
459. N.J.A.C. 6A:14-2.6(d)(4)(v).
460. 20 U.S.C. §§ 1415(e)(2)(F) ; 34 C.F.R. § 300.506(b)(6); N.J.A.C. 6A:14-2.6(d)(6).
461. N.J.A.C. 6A:14-2.6(d)(6).
462. 20 U.S.C. § 1415(e)(2)(G); 34 C.F.R. § 300.506(b)(8); N.J.A.C. 6A:14-2.6(d)(6) and (7).
463. N.J.A.C. 6A:14-2.6(a)(2) and 2.7(h)(8).
464. N.J.A.C. 6A:14-2.7(o)(2)(iii).
465. 34 C.F.R. § 300.510(c); N.J.A.C. 6A:14-2.7(h)(4)and (h)5, (h)(8)(iii)and (o)(2)(iii).
466. 20 U.S.C. §§ 1415(e)(2)(F); 34 C.F.R. §§ 300.506(b)(6) and 300.514(a); N.J.A.C. 6A:14-2.6(d)(11) and 2.7(l).
467. N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
468. 34 C.F.R. § 300.152(c)(3); N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
469. N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
470. N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
471. N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
472. N.J.A.C. 6A:14-2.6(d)(11) and 2.7(t).
473. 34 C.F.R. §§ 300.151-153; N.J.A.C. 6A:14-9.2.
474. *Id.*
475. 34 C.F.R. § 300.153(b)(2) and (4)(iv); N.J.A.C.

- 6A:14-9.2(b)(2).
 476. N.J.A.C. 6A:14-9.2(b)(3).
 477. N.J.A.C. 6A:14-9.2(d).
 478. N.J.A.C. 6A:14-9.2(d)(1).
 479. 34 C.F.R. § 300.152(a)(1).
 480. 34 C.F.R. §§ 300.152(a)(1) and (4); N.J.A.C. 6A:14-9.2(c)(2)(i)-(v).
 481. 34 C.F.R. § 300.152(a)(2); N.J.A.C. 6A:14-9.2(c)(3).
 482. 34 C.F.R. §§ 300.152(a) and (b)(1)(i); N.J.A.C. 6A:14-9.2(c)(5).
 483. 34 C.F.R. § 300.152(a)(5); N.J.A.C. 6A:14-9.2(e).
 484. 34 C.F.R. § 300.152(a)(5).
 485. 34 C.F.R. § 300.152(b)(2).
 486. 34 C.F.R. § 300.152(b)(2)(iii); N.J.A.C. 6A:14-9.2(f).
 487. N.J.A.C. 6A:14-9.2(g).
 488. 34 C.F.R. § 300.152(b)(2)(i).
 489. *Bd. of Educ. of Lenape Reg. High Sch. Dist. v. N.J. State Dept. of Educ., Office of Special Educ. Programs*, 399 N.J. Super. 595 (App. Div. 2008).
 490. United States Department of Education Analysis of Comments and Changes to its Notice of Public Rulemaking, 64 FR. 12406, 12654 (March 12, 1999).
 491. 20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); N.J.A.C. 6A:14-2.7(v).
 492. N.J.A.C. 6A:14-2.7(v)(1).
 493. 20 U.S.C. § 1415(i)(3)(B)(i)(I); 34 C.F.R. § 300.517(a)(i).
 494. N.J.A.C. 1:6A-14.4(a).
 495. *Id.*
 496. N.J.A.C. 1:6A-14.4(b).
 497. 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(a) and 1.3 (in a Memorandum dated January 9, 2007 to school administrators, NJDOE clarified with respect to the September 5, 2006 amendments to Chapter 14 that the definition of “pre-school child with a disability” includes a pre-school-age child with an identified disabling condition).
 498. N.J.A.C. 6A:14-3.3(e)(3).
 499. N.J.A.C. 6A:14-3.3(e)(2).
 500. N.J.A.C. 6A:14-4.3(d).
 501. N.J.A.C. 6A:14-4.3(d)(1)-(4).
 502. *Abbott v. Burke*, 153 N.J. 480 (1988) (“Abbott V”); *Abbott v. Burke*, 163 N.J. 95 (2000) (“Abbott VI”), order clarified, 170 N.J. 537 (2002), modified in part, 180 N.J. 444, judgment modified, 181 N.J. 311 (2004).
 503. N.J.A.C. 6A:14-4.3(d).
 504. N.J.A.C. 6A:14-4.3(d)(1)-(4).
 505. 34 C.F.R. § 300.106(b); N.J.A.C. 6A:14-1.3 (definition of “extended school year services”).
 506. 34 C.F.R. § 300.106(a)(2), (3); N.J.A.C. 6A:14-4.3(c); see also *Johnson v. Indep. Sch. Dist.*, 921 F.2d 1022, 1030 (10th Cir. 1990).
 507. 20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.105(a); N.J.A.C. 6A:14-3.7(c)(9).
 508. 20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); N.J.A.C. 6A:14-3.7(e)(2).
 509. 34 C.F.R. § 300.105.
 510. N.J.A.C. 6A:14-3.7(c)(9)(ii).
 511. N.J.A.C. 6A:14-4.3(a)(2).
 512. 20 U.S.C. § 1401(1)(A); 34 C.F.R. § 300.5; N.J.A.C. 6A:14-1.3.
 513. 20 U.S.C. § 1401(2); 34 C.F.R. § 300.6; N.J.A.C. 6A:14-1.3.
 514. 20 U.S.C. §§ 1414(b)(3)(C), (d)(3)(B)(v); N.J.A.C. 6A:14-3.4(f)(4).
 515. 34 C.F.R. § 300.154(d)(2).
 516. 34 C.F.R. § 300.154(d).
 517. 34 C.F.R. § 300.105(b); N.J.A.C. 6A:14-3.7(c)(9)(ii).
 518. 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a); N.J.A.C. 6A:14-1.1(b)(1).
 519. N.J.A.C. 6A:14-3.7(e)(11).
 520. N.J.A.C. 6A:14-3.4(f)(5).
 521. N.J.A.C. 6A:14-2.3(k)(5)(ii)(2) and (iii)(2).
 522. N.J.A.C. 6A:14-2.3(k)(5)(ii)(1) and (iii)(1).
 523. N.J.A.C. 6A:14-3.7(e)(11)(iii) and (iv).
 524. N.J.A.C. 6A:14-3.7(e)(11).
 525. 20 U.S.C. §§ 1414(d)(1)(A)(i)(VII)(aa) and (bb); 34 C.F.R. §§ 300.320(b)(1) and (2); N.J.A.C. 6A:14-3.7(e)(12).
 526. 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa); 34 C.F.R. § 300.320(b)(1); N.J.A.C. 6A:14-3.7(e)(12).
 527. 20 U.S.C. § 1401(34)(A); 34 C.F.R. § 300.43(a)(1); N.J.A.C. 6A:14-3.7(e)(12)(i).
 528. 20 U.S.C. § 1401(34)(B); 34 C.F.R. § 300.43(a)(2); N.J.A.C. 6A:14-3.7(e)(12)(i).
 529. 20 U.S.C. § 1401(34)(C); 34 C.F.R. § 300.43(a)(2); N.J.A.C. 6A:14-3.7(e)(12)(i).
 530. N.J.A.C. 6A:14-3.2(c)(4).
 531. N.J.A.C. 6A:14-3.7(e)(13).
 532. N.J.A.C. 6A:14-2.3(k)(2)(x).
 533. N.J.A.C. 12:45-1.4(a) and 1.2.
 534. N.J.A.C. 6A:14-3.7(c)(10), (d)(11)(iii) and 12:45-1.2.
 535. N.J.A.C. 6A:14-3.7(h).
 536. 20 U.S.C. § 1414(d)(6); 34 C.F.R. § 300.324(c)(2); N.J.A.C. 6A:14-3.7(g).
 537. N.J.A.C. 6A:14-1.3.
 538. 20 U.S.C. §§ 1415(m)(1)(A) and (C); 34 C.F.R. § 300.520(a)(1)(i), (3); N.J.A.C. 6A:14-3.7(e)(14).
 539. 20 U.S.C. § 1415(m)(1)(B); 34 C.F.R. § 300.520(a)(1)(ii); N.J.A.C. 6A:14-2.3(m).
 540. 20 U.S.C. §§ 1415(m)(1)(A) and (B); 34 C.F.R. §§ 300.520(a)(1)(i) and (ii); N.J.A.C. 6A:14-2.3(m).
 541. *Id.*
 542. N.J.A.C. 6A:32-2.1 (definition of “student record”) and 7.1(f).
 543. N.J.A.C. 6A:32-2.1 (definition of “access”).
 544. N.J.A.C. 6A:32-7.5(c).
 545. 34 C.F.R. § 300.613(a); N.J.A.C. 6A:14-2.9(b) and 32-7.1(g).
 546. 20 U.S.C. § 1415(b)(1); 34 C.F.R. §§ 300.501(a) and 300.613(a); N.J.A.C. 6A:14-2.9(b).
 547. 34 C.F.R. §§ 300.613(b)(1) and (3).
 548. N.J.A.C. 6A:32-7.6(a)(3).
 549. N.J.A.C. 6A:14-2.4(a)(1).
 550. N.J.A.C. 6A:32-7.1(c) and 7.3(a).
 551. N.J.A.C. 6A:32-7.1(c) and (h).
 552. N.J.A.C. 6A:32-7.7(a).
 553. N.J.A.C. 6A:32-7.7(b).
 554. *Id.*
 555. *Id.*
 556. N.J.A.C. 6A:14-2.6(a), 2.7(a) and 32-7.7(c).
 557. N.J.A.C. 6A:32-7.7(a)(2).
 558. N.J.A.C. 6A:32-7.1(g)(10).
 559. N.J.A.C. 6A:32-7.5(a), (e).
 560. N.J.A.C. 6A:32-7.5(e).
 561. N.J.A.C. 6A:32-7.6(a)(3).
 562. N.J.A.C. 6A:32-7.8(c).

563. N.J.A.C. 6A:14-7.9(a).
564. N.J.A.C. 6A:14-7.9(a)(2).
565. 20 U.S.C. § 1401(23); 34 C.F.R. § 300.30; N.J.A.C. 6A:14-1.3, -2.2.
566. 20 U.S.C. §§ 1415(b)(2)(A) and (B); 34 C.F.R. §§ 300.519(a), (b) and (h); N.J.A.C. 6A:14-2.2(a) and (b).
567. 34 C.F.R. § 300.519(g); N.J.A.C. 6A:14-2.2(a).
568. 20 U.S.C. § 1415(b)(2)(A); 34 C.F.R. § 300.519(d)(2); N.J.A.C. 6A:14-2.2(e)(1) and (f).
569. 34 C.F.R. § 300.519(d)(2)(iii); N.J.A.C. 6A:14-2.2(e)(2) and (3).
570. 34 C.F.R. § 300.519(g); N.J.A.C. 6A:14-2.2(c).
571. 20 U.S.C. § 1412(a)(25); 34 C.F.R. § 300.174; N.J.A.C. 6A:14-1.1(i).
572. 20 U.S.C. §§ 1415(k)(1)(B) and (C); 34 C.F.R. § 300.530(c); N.J.A.C. 6A:14-2.8(a), 16-7.2(c) and 16-7.3(g)(1).
573. N.J.A.C. 6A:16-7.1, *et seq.*
574. *R.R. v. Bd. of Educ. of Shore Reg. High Sch. Dist.*, 109 N.J. Super. 337 (Ch. Div. 1970); *Tibbs v. Bd. of Educ. of Twp. of Franklin*, 114 N.J. Super. 287 (App. Div. 1971), *aff'd* 59 N.J. 506 (1971); N.J.A.C. 6A:16-7.3 and 7.4.
575. N.J.A.C. 6A:14-2.8(a)(1).
576. 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)(4).
577. 20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); N.J.A.C. 6A:14-3.8(a).
578. 20 U.S.C. § 1414(b)(3)(B) and (C); 34 C.F.R. § 300.304(c)(4) and (6); N.J.A.C. 6A:14-3.4(f).
579. 20 U.S.C. § 1414(b)(2)(A)(ii); 34 C.F.R. § 300.304(b)(1)(ii); N.J.A.C. 6A:14-3.4(a)(2).
580. 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); N.J.A.C. 6A:14-3.4(f)(4).
581. N.J.A.C. 6A:14-3.4(h)(1) and (2).
582. 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 and 16-7.1(a)7.
583. 20 U.S.C. §§ 1415(k)(1)(C) and (G); 34 C.F.R. §§ 300.530(b)(2), (c) and (g).
584. N.J.A.C. 6A:16-7.2(a)(5)(i); -7.2(a)(5) (ii), 7.3(a)(9)(i) and 7.3(a)(9)(iii).
585. 20 U.S.C. §§ 1415(k)(1)(C) and (G); 34 C.F.R. § 300.530(d)(1) and (2).
586. 20 U.S.C. § 1415(k)(1)(A); 34 C.F.R. § 300.530(a); N.J.A.C. 6A:14-2.8(b).
587. 20 U.S.C. §§ 7151(b)(1) and (c); N.J.S.A. 18A:37-8; N.J.A.C. 6A:16-5.5(c) (both federal and State zero tolerance for guns statutes specifically require that mandatory removals be subject to modification on a case-by-case basis by the chief school administrator and that the provisions of the acts be construed in a manner consistent with the provisions of IDEA).
588. 20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h).
589. N.J.A.C. 6A:14-2.8(a).
590. N.J.A.C. 6A:16-7.1(a)(7).
591. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §§ 300.530(b) and 300.530(e); N.J.A.C. 6A:16-7.1(a)(7).
592. N.J.A.C. 6A:16-7.2(a)(5)(i).
593. N.J.A.C. 6A:16-7.2(a)(5)(ii).
594. N.J.A.C. 6A:16-7.2(a).
595. 34 C.F.R. § 300.530(b)(2).
596. 34 C.F.R. §§ 300.530(b)(2) and (d)(4).
597. 34 C.F.R. § 300.530(d)(4).
598. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c); N.J.A.C. 6A:16-7.1(a)(7).
599. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §§ 300.530(c), (d)(1) and (d)(2); N.J.A.C. 6A:16-7.3(a)(9)(i) and (iii).
600. N.J.A.C. 6A:16-7.3(a)(9).
601. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1); N.J.A.C. 6A:14-2.8(d) and 16-7.3(a)(7).
602. 20 U.S.C. §§ 1415(k)(1)(E)(i) and (ii); 34 C.F.R. §§ 300.530(e)(1) and (2).
603. 20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2).
604. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).
605. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).
606. 20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).
607. 20 U.S.C. §§ 1415(k)(1)(F)(i) and (ii); 34 C.F.R. § 300.530(f)(1).
608. 20 U.S.C. §§ 1415(k)(1)(C) and (D)(i); 34 C.F.R. §§ 300.530(c) and (d)(1)(i).
609. 20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g); N.J.A.C. 6A:14-2.8(f). Although IDEA itself permits the involuntary removal of the student under special circumstance for up to 45 school days, New Jersey's special education regulations limit a school district's authority to involuntarily remove a student to 45 calendar days.
610. 20 U.S.C. §§ 1415(k)(1)(G) and (7); 34 C.F.R. § 300.530(g); N.J.A.C. 6A:14-2.8(f) (citing the definitions of these terms at 18 U.S.C. § 930(g)(2), 18 U.S.C. § 1365(h)(3), 21 U.S.C. § 812(c), Schedules I - V and 20 U.S.C. § 1415(k)(7)(B), all of which are set forth in Appendix J of this manual).
611. 20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii); N.J.A.C. 6A:14-2.8(f).
612. 34 C.F.R. § 300.536(a).
613. 34 C.F.R. § 300.530(e)(1).
614. 34 C.F.R. § 300.530(f).
615. 34 C.F.R. § 300.530(b)(2).
616. 34 C.F.R. § 300.536(b).
617. 20 U.S.C. § 1415(k)(5); 34 C.F.R. § 300.534.
618. 20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).
619. N.J.A.C. 6A:14-3.3(f).
620. 20 U.S.C. § 1415(k)(5)(C); 34 C.F.R. § 300.534(c).
621. 20 U.S.C. § 1415(k)(5)(D)(ii); 34 C.F.R. § 300.534(d)(2)(ii).
622. 20 U.S.C. § 1415(k)(5)(D)(ii); 34 C.F.R. § 300.534(d)(2)(iii).
623. 20 U.S.C. § 1415(k)(3); 34 C.F.R. § 300.532(a).
624. 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2); N.J.A.C. 6A:14-2.7(o)2.ii.
625. 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2); N.J.A.C. 6A:14-2.7(o)(4).
626. 34 C.F.R. § 300.532(c)(3)(i).
627. 34 C.F.R. § 300.532(c)(3)(ii).
628. N.J.A.C. 6A:14-2.7(o)(3).
629. 20 U.S.C. § 1415(k)(4)(A); 34 C.F.R. § 300.533; N.J.A.C. 6A:14-2.7(u).
630. N.J.A.C. 6A:14-7.1(c), 7.6(e), 7.6(f) and 6A:16-1.2.
631. N.J.A.C. 6A:14-7.6(e).
632. N.J.A.C. 6A:14-7.6(f) and 6A:16-1.2.
633. N.J.A.C. 6A:14-7.6(f) and 7.7(a).
634. 20 U.S.C. § 1412(a)(10)(A); 34 C.F.R. § 300.129, *et seq.*; N.J.A.C. 6A:14-6.1 and 6.2.
635. 20 U.S.C. § 1412(a)(10)(A)(ii)(D); 34 C.F.R. §

- 300.131(a); N.J.A.C. 6A:14-3.3(a)(2) and 6.1(c).
 636. 34 C.F.R. §§ 300.137(a) and 138(a)(2).
 637. 20 U.S.C. § 1412(a)(10)(A)(i); 34 C.F.R. § 300.132(a); N.J.A.C. 6A:14-6.1(b).
 638. 20 U.S.C. § 1412(a)(10)(A)(iii); 34 C.F.R. § 300.134; N.J.A.C. 6A:14-6.1(c)(1).
 639. *Id.*
 640. 34 C.F.R. § 300.138(c)(1); N.J.A.C. 6A:14-6.1(d).
 641. 34 C.F.R. § 300.138(c)(2); N.J.A.C. 6A:14-6.1(d).
 642. 34 C.F.R. §§ 300.137(b)(1), (2); N.J.A.C. 6A:14-6.1(a)(1).
 643. 34 C.F.R. §§ 300.137(c), 300.138(b)(1) and (2); N.J.A.C. 6A:14-6.1(f)(1).
 644. 34 C.F.R. § 300.137(c)(2); N.J.A.C. 6A:14-6.1(f)(2).
 645. 34 C.F.R. § 300.139(a).
 646. 34 C.F.R. § 300.139(b)(1).
 647. 34 C.F.R. § 300.140(b); N.J.A.C. 6A:14-6.1(e)(1).
 648. 34 C.F.R. § 300.140(a); N.J.A.C. 6A:14-6.1(e)(2).
 649. 34 C.F.R. § 300.140(c); N.J.A.C. 6A:14-6.1(e)(2).
 650. 34 C.F.R. § 300.140(c); N.J.A.C. 6A:14-6.1(c)(1)(iii).
 651. N.J.A.C. 6A:14-6.2; N.J.S.A. 18A:46-19.1 and 46A-1.
 652. N.J.S.A. 18A:46-19.4; N.J.A.C. 6A:14-6.2(c).
 653. N.J.S.A. 18A:46A-1, *et seq.*; N.J.A.C. 6A:14-6.2(d) and (e).
 654. N.J.S.A. 18A:46A-2.
 655. N.J.A.C. 6A:14-6.2(f).
 656. N.J.A.C. 6A:14-6.2(g)(1)(i).
 657. N.J.A.C. 6A:14-6.2(g)(1).
 658. N.J.A.C. 6A:14-6.2(g)(2).
 659. N.J.A.C. 6A:14-1.1(c) and 7.1(c).
 660. 20 U.S.C. § 1413(a)(5); 34 C.F.R. § 300.209(a); 6A:11-4.8.
 661. N.J.A.C. 6A:14-1.3.
 662. N.J.A.C. 6A:14-1.2(h).
 663. 20 U.S.C. §§ 1432(1), 1432 (5) and 1435.
 664. 20 U.S.C. §§ 1432(3) and 1435(a)(1).
 665. N.J.A.C. 6A:14-10.1.
 666. 20 U.S.C. § 1432(4)(C).
 667. 20 U.S.C. § 1432(4)(E).
 668. 20 U.S.C. § 1432(4)(G).
 669. 20 U.S.C. § 1432(4)(H).
 670. 20 U.S.C. § 1435(a)(3), (4).
 671. 20 U.S.C. § 1439(a)(1), (3) and (6).
 672. July 3 2007 Family Cost Participation Letter, New Jersey Department of Health and Senior Services, Division of Family Health Services, available at http://www.state.nj.us/health/fhs/eis/cost_participation.shtml.
 673. 29 U.S.C. § 794; 34 C.F.R. 104.1, *et seq.*
 674. 29 U.S.C. §§ 705(20) and 794; 34 C.F.R. § 104.3(j).
 675. 34 C.F.R. § 104.3(j)(2)(ii).
 676. *Id.*
 677. 34 C.F.R. §§ 104.33(a) and 104.34(a).
 678. 34 C.F.R. §§ 104.35(a) and (b) (the 504 regulations do not specify who must be included in this group, but parents are generally considered persons knowledgeable about the child who should be included).
 679. *Id.*
 680. 34 C.F.R. §§ 104.35(c) and 104.36.
 681. 34 C.F.R. § 104.33(b)(2) (describing how Section 504's requirements are met for children classified under IDEA).
 682. 34 C.F.R. § 104.35(c).
 683. 34 C.F.R. §§ 104.33, 104.34 and 104.35(d).
 684. 34 C.F.R. § 104.36.
 685. *Id.*
 686. 34 C.F.R. § 104.35(a).
 687. *S-1 v. Turlington*, 635 F.2d 342 (4th Cir. 1981).
 688. 34 C.F.R. § 104.36.
 689. N.J.A.C. 6A:14-2.7(w).
 690. N.J.A.C. 6A:14-2.7(w)(1).
 691. 29 U.S.C. § 794; 34 C.F.R. 104.4.
 692. 34 C.F.R. § 104.4.

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