

**CHAPTER 6A**  
**SPECIAL EDUCATION PROGRAM**

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

Source and Effective Date  
R.2000 d.94, effective February 10, 2000.  
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Executive Order No. 66(1978) Expiration Date  
Chapter 6A, Special Education Program, expires on February 10, 2005.

**Chapter Historical Note**

Chapter 6A, Special Education Program, was adopted as R.1982 d.462, effective January 3, 1983. See: 14 N.J.R. 930(a), 15 N.J.R. 25(b).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1987 d.200, effective May 4, 1987, operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Chapter 6A, Special Education Program, was repealed and Chapter 6A, Special Education Program, was adopted as new rules by R.1990 d.169, effective March 19, 1990. See: 21 N.J.R. 2693(a), 22 N.J.R. 916(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.1995 d.176, effective February 27, 1995. See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

Pursuant to Executive Order No. 66(1978), Chapter 6A, Special Education Program, was readopted as R.2000 d.94, effective February 10, 2000. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. APPLICABILITY**

**1:6A-1.1 Applicability**

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

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

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

**Case Notes**

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., C.A.3 (N.J.)1994, 42 F.3d 149, rehearing and rehearing in banc denied.*

## SUBCHAPTERS 2 THROUGH 3. (RESERVED)

Rewrote the section. Former N.J.A.C. 1:6A-4.1, Notice of available legal service, repealed.

**SUBCHAPTER 4. AGENCY RESPONSIBILITY  
BEFORE TRANSMISSION TO THE OFFICE  
OF ADMINISTRATIVE LAW**

## 1:6A-4.1 Mediation by the Department of Education

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

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

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

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

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

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

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

Amended by R.1990 d.405, effective August 6, 1990.

See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

In (f): Added language specifying that parents shall provide the department with a telephone number for contact.

Recodified from N.J.A.C. 1:6A-4.2 and amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

## Case Notes

Federal law did not preempt regulation prohibiting lay person with special knowledge or training in the education of handicapped children from receiving fees for legal representation. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Act permitting parents to be accompanied and advised by specially qualified individuals did not permit those specially qualified individuals to render legal services at the hearings. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Rule prohibiting fees to nonlawyers for legal representation does not deny nonlawyers equal protection. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Lay person is not precluded from receiving fees for work done as an expert consultant or witness at hearing held to determine appropriateness of education being provided to handicapped children. *Arons v. New Jersey State Bd. of Educ.*, C.A.3 (N.J.)1988, 842 F.2d 58, certiorari denied 109 S.Ct. 366, 488 U.S. 942, 102 L.Ed.2d 356.

Stipulation of settlement reached in suit seeking residential placement did not bar action in federal district court demanding funding. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

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

## 1:6A-4.2 (Reserved)

Recodified to N.J.A.C. 1:6A-4.1 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

## 1:6A-4.3 Ongoing settlement efforts

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

(b) Any ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless a party requests an adjournment and the judge approves the adjournment to a specific date. Any such adjournment shall extend the deadline for decision, as established in N.J.A.C. 1:6A-18.1, Deadline for decision, by an amount of time equal to the adjournment.

## Case Notes

Commissioner of Education lacks jurisdiction to enforce settlement agreement in special education case. *Bellesfield v. Randolph Township Board of Education*, 96 N.J.A.R.2d (EDU) 35.

## SUBCHAPTER 5. REPRESENTATION

## 1:6A-5.1 Representation

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

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

Amended by R.1995, d.176, effective March 20, 1995.  
See: 27 N.J.R. 4(a), 27 N.J.R. 1179(a).

## SUBCHAPTERS 6 THROUGH 8. (RESERVED)

## SUBCHAPTER 9. SCHEDULING

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

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

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

Amended by R.1990 d.405, effective August 6, 1990.  
See: 22 N.J.R. 1295(a), 22 N.J.R. 2262(b).

Revised section into subsections (a) and (b).

Deleted "agreed upon by all parties" referring to later date scheduling.

Added sentence; "If the parents . . . by the clerk."

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (b), substituted a reference to scheduling calls for a reference to conferences.

## 1:6A-9.2 Adjournments

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

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

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), inserted "of the hearing" following "adjournment".

## SUBCHAPTER 10. DISCOVERY

## 1:6A-10.1 Discovery

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

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

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

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

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (a); and in (c), substituted a reference to business days for a reference to days.

## SUBCHAPTER 11. (RESERVED)

## SUBCHAPTER 12. MOTIONS

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

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board

or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the State Director of the Office of Special Education Programs, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements above shall be processed by the Department in accordance with N.J.A.C. 1:6A-4.2.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief pending issuance of the decision in the matter or, for those issues specified in N.J.A.C. 1:6A-14.2(a), may order a change in the placement of a student to an interim alternative educational setting for not more than 45 days in accordance with 20 U.S.C. § 1415(k)(2), if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and

4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

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

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

Amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), substituted "State Director of the Office of Special Education Programs" for "Department of Education, attention Division of Special Education" in the first sentence; and rewrote (e) and (g).

#### Case Notes

Parents of handicapped student were not entitled to order requiring state agencies to fund residential costs. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

District court lacked power to vacate administrative denial of funding for residential placement of handicapped student. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 823 F.Supp. 254.

Parents of disabled student exhausted administrative remedies. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1992, 796 F.Supp. 767.

Emotionally disturbed child and his parent were "prevailing parties". E.P. by P.Q. v. Union County Regional High School Dist. No. 1, D.N.J.1989, 741 F.Supp. 1144.

Child's need for immediate placement in private school warranted emergency relief. *J.G. v. Franklin Township Board of Education*, 97 N.J.A.R.2d (EDS) 13.

Child's grade placement was not issue subject to grant of emergency relief. *T.R. v. Mt. Olive Board of Education*, 96 N.J.A.R.2d (EDS) 125.

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

Emergency relief request denied when change of classroom location was found not to constitute change of program. *C.M. v. Elizabeth Board of Education*, 96 N.J.A.R.2d (EDS) 75.

Emergency implementation of home schooling plan provided satisfactory interim education for mentally handicapped student during pendency of mediation process. *M.F. v. Toms River Regional Board of Education*, 96 N.J.A.R.2d (EDS) 67.

Emergency relief allowing classified student to participate in interscholastic sports denied when classified student making good academic progress without requested relief. *N.W. v. Brick Township Board of Education*, 96 N.J.A.R.2d (EDS) 36.

School board's request for emergency relief to implement special education services granted where reasonable probability of board prevailing on merits existed. *Bergenfield Board of Education v. C.W.*, 96 N.J.A.R.2d (EDS) 19.

Emergency relief was not available to provide a sign-language interpreter to a hearing impaired student attending a private school while residing in district. *M.S. v. Washington Township Board*, 95 N.J.A.R.2d (EDS) 253.

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

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

Escalating misconduct warranted home instruction pending out-of-district placement for behavioral modification. *West Windsor v. J.D.*, 95 N.J.A.R.2d (EDS) 146.

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

Harassment required removal from special education class and placement in comparable mainstream class. *P.D. v. Hasbrouck Heights*, 95 N.J.A.R.2d (EDS) 5.

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

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

Unresolved issue of domicile prevents grant of emergency petition for enrollment. *R.R. v. Freehold Regional High School District*, 94 N.J.A.R.2d (EDS) 38.

### SUBCHAPTER 13. PREHEARING CONFERENCES

#### 1:6A-13.1 Prehearing conferences

Prehearing conferences shall not be scheduled in special education hearings.

### SUBCHAPTER 14. CONDUCT OF CASES

#### 1:6A-14.1 Procedures for hearing

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

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

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

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

Amended by R.1992 d.331, effective September 8, 1992.  
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Deleted (c); redesignated (d)-(e) as (c)-(d).

#### 1:6A-14.2 Expedited hearings

(a) An expedited hearing shall be scheduled:

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

2. At the request of a parent if:

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

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

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

1. Determine whether both parties request mediation;
2. If both parties request mediation, schedule the dates for the mediation and for the hearing; and
3. If mediation is not requested, schedule dates for the hearing.

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

(d) In an expedited hearing:

1. Responses to requests for discovery pursuant to N.J.A.C. 1:6A-10.1 shall be completed no later than two business days before the hearing. Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least two business days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

2. A written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than

45 days from the date of the hearing request. The time for issuance of an initial decision shall not be extended.

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

1. Considers the appropriateness of the child's current placement;
2. Considers whether the board of education or public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services;
3. Determines that the board of education or public agency has demonstrated by substantial evidence, that is, beyond a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; and
4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher will enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP and includes services and modifications to address the behavior and that are designed to prevent the behavior from recurring.

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

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

New Rule, R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.2, Interpreters, recodified to N.J.A.C. 1:6A-14.3.

#### 1:6A-14.3 Interpreters

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

Recodified from N.J.A.C. 1:6A-14.2 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.3, Independent educational evaluation, recodified to N.J.A.C. 1:6A-14.4.

#### 1:6A-14.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6:28-1 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 CFR 300.503)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

Recodified from N.J.A.C. 1:6A-14.3 by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Former N.J.A.C. 1:6A-14.4, Transcripts, recodified to N.J.A.C. 1:6A-14.5.

#### 1:6A-14.5 Transcripts

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

(b) Transcripts of any hearing may be obtained pursuant to 20 U.S.C. § 1415(h)(3) by contacting the Office of Special Education Programs.

New Rule, R.1992 d.331, effective September 8, 1992.

See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Recodified from N.J.A.C. 1:6A-14.4 and amended by R.2000 d.94, effective March 6, 2000.

See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

Rewrote (b).

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### SUBCHAPTERS 15 THROUGH 17. (RESERVED)

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### SUBCHAPTER 18. DECISION AND APPEAL

#### 1:6A-18.1 Deadline for decision

Subject to any adjournments pursuant to N.J.A.C. 1:6A-9.2, a written decision shall be issued by the judge and mailed by the Office of Administrative Law no later than 45 days from the date of the hearing request.

Amended by R.1992 d.331, effective September 8, 1992.  
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).  
Revised text.

### 1:6A-18.2 Confidentiality

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

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

Amended by R.2000 d.94, effective March 6, 2000.  
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).  
Rewrote (b).

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

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

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

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

Administrative correction: 20 U.S.C.A. 1415(e)(3) changed to 20 U.S.C.A. 1415(e)(2).

See: 22 N.J.R. 3478(a).  
Amended by R.1992 d.331, effective September 8, 1992.  
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).

Revised (b).  
Amended by R.2000 d.94, effective March 6, 2000.  
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (b), substituted references to the Office of Special Education Programs for references to the Office of Administrative Law throughout.  
Administrative correction.  
See: 33 N.J.R. 1209(a).

#### Case Notes

Parents of disabled student exhausted administrative remedies. Woods on Behalf of T.W. v. New Jersey Dept. of Educ., D.N.J.1992, 796 F.Supp. 767.

### 1:6A-18.4 Stay of implementation

(a) Unless the parties otherwise agree or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.513.

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

Amended by R.2000 d.94, effective March 6, 2000.  
See: 31 N.J.R. 3875(a), 32 N.J.R. 785(a).

In (a), inserted "or the judge orders pursuant to N.J.A.C. 1:6A-12.1 or 14.2" following "agree".

#### Case Notes

Student, classified as perceptually impaired, who filed an application for emergency relief return to his previously established course of study, was returned to mainstream placement with resource room assistance pending outcome of the dispute over his proper classification and placement. M.H. v. East Windsor Regional School District, 9 N.J.A.R. 159 (1986).

### 1:6A-18.5 (Reserved)

Repealed by R.1992 d.331, effective September 8, 1992.  
See: 24 N.J.R. 1936(a), 24 N.J.R. 3091(a).  
Section was "Motion to reopen hearing".