

REGULATION #2460.06 Special Education – Procedural Safeguards

[See POLICY ALERT Nos. 95, 101, 104, 108, 112, 119, 129, 132, 138, 146 and 148]

A. General Requirements

1. A pupil with a disability age sixteen through twenty-one, who voluntarily leaves the school district before receiving a high school diploma, may reenroll at any time up to and including the school year of his/her twenty-first birthday.
2. The Superintendent of Schools and/or designee shall provide, upon request by the parent(s), legal guardian(s) and/or the adult pupil, copies of special education statutes and rules, pupil record rules and/or low cost legal or other services relevant to a due process hearing and/or rules.
3. If mediation or a due process hearing involves the pupil's initial admission to the school district, the pupil shall be placed in an interim public school program agreed to by the school district and the parent(s), legal guardian(s) and/or the adult pupil pending the outcome of the mediation or due process hearing.

B. Surrogate Parents

1. In the event that a pupil's parent(s), legal guardian(s) and/or the adult pupil cannot be identified or cannot be located after reasonable efforts, or a pupil is a ward of the State of New Jersey, the Superintendent shall appoint an individual to act as surrogate for the parent under these rules and in accordance with N.J.A.C. 6A:14-2.2.
2. A surrogate parent shall not be an employee of the Board of Education, have any interest that shall conflict or appear to conflict with the pupil he/she represents, and possess knowledge and skills that ensure adequate representation of the pupil.
3. The method to select a surrogate parent and a training program for surrogate parents shall be established by the Superintendent and reviewed on an annual basis.

C. Parental Participation

1. The consent of the parent(s), legal guardian(s) and/or the adult pupil shall be obtained prior to an initial evaluation, prior to the implementation of the initial Individualized Education Program (IEP) resulting from an initial evaluation, prior to reevaluation, except that consent is not required if the school district administration can demonstrate that it has taken reasonable measures to obtain such consent and the parent(s), legal guardian(s) and/or the adult pupil failed to respond, and prior to the release of pupil records in accordance with N.J.A.C. 6:3-6. Upon receipt of consent, the school district administration shall implement without delay the action for which consent was granted.

2. If a parent(s), legal guardian(s) and/or adult pupil refuses to provide consent and the school district and the parent(s), legal guardian(s) and/or the adult pupil have not agreed on other action, the school district shall request a due process hearing to obtain consent.
3. Written notice shall be provided to the parent(s), legal guardian(s) and/or adult pupil when the school district administration:
 - a. Proposes to initiate or change the identification, classification, evaluation, or educational placement of the pupil, or the provision of a free appropriate public education to the pupil; or
 - b. Declines to initiate or change the identification, classification, evaluation, or educational placement of the pupil, or the provision of a free appropriate public education to the pupil.
4. Written notice must be given in a language understandable to the general public, and, wherever feasible, in the native language of the parent(s), legal guardian(s) and/or the adult pupil. Any notice supplied under this rule shall be clearly written and shall include:
 - a. A description of the action proposed or denied including;
 - b. An explanation of why the school district is taking such action;
 - c. A description of any options considered and the reasons why those options were rejected;
 - d. A description of the procedures, tests, records or reports, and factors used in the school district's decision whether to propose or deny an action;
 - e. A description of any other factors relevant to the proposal or refusal by the school district;
 - f. A statement that the parent(s), legal guardian(s) of a pupil and/or the adult pupil with a disability have protection under the procedural safeguards, the means by which a copy of the procedural safeguards can be obtained and sources the parent(s), legal guardian(s) and/or the adult pupil can contact to obtain assistance in understanding the laws and statutes; and
 - g. A copy of the procedural safeguards statement published by the New Jersey Department of Education shall be provided upon referral for an initial evaluation, upon notification of an IEP meeting, upon reevaluation, and when a request for a due process hearing is submitted to the New Jersey Department of Education.
5. Written notice shall be given to parent(s), legal guardian(s) and/or the adult pupil no later than fifteen calendar days after making a determination, and at least fifteen calendar

days prior to the date of implementation of a proposed action for the parent(s), legal guardian(s) and/or the adult pupil to consider the proposed action. The proposed action may be implemented sooner if the parent(s), legal guardian(s) and/or the adult pupil agrees in writing.

The school district shall implement the proposed action on the fifteenth day after notice unless:

a. The parent(s), legal guardian(s) and/or the adult pupil disagrees with the proposed action, and the school district takes action in an attempt to resolve the disagreement; or

b. The parent(s), legal guardian(s) and/or the adult pupil requests mediation or a due process hearing.

6. The school district may provide written notice less than fifteen calendar days prior to the implementation of a disciplinary action when the IEP Team determines that disciplinary action requires immediate implementation. The school district shall maintain documentation of all written notices. Such written notice shall comply with the requirements of this regulation, and shall include the reason(s) that notice for less than fifteen calendar days was warranted. During the pendency of mediation, or a due process hearing related to the disciplinary action, the pupil shall be returned to the last agreed upon placement, unless the parent(s), legal guardian(s) and/or the adult pupil and school district agree otherwise, the school district requests emergency relief, or if the pupil has been placed in an interim alternative educational setting in accordance with 20 U.S.C. §1415(k)(1)(A)(ii) or §1415(k)(2), the pupil shall remain in the interim alternative educational setting in accordance with 20 U.S.C. §1415(k)(7).

7. Upon receipt of any written parental, legal guardian(s) and/or adult pupil request to initiate or change the identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the written notice requirements in this regulation shall be provided to the parent(s), legal guardian(s) and/or the adult pupil within twenty calendar days, excluding school holidays, but not summer vacation.

8. When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice requirement of this regulation, the parent(s), legal guardian(s) and/or the adult pupil shall be provided a copy of the special education rules (N.J.A.C. 6A:14) and due process hearing rules (N.J.A.C. 1:6A).

9. The Board of Education shall take steps to ensure parent(s), legal guardian(s) and/or the adult pupil are given the opportunity to participate in:

a. The identification and evaluation of the pupil by providing relevant information to the evaluation team;

b. The determination of the pupil's eligibility for special education and related services;

- c. The development of the pupil's IEP in accordance with N.J.A.C. 6A:14-3.7;
 - d. The placement of the pupil with a disability; and
 - e. The annual review of the IEP.
10. Meetings shall be conducted to determine eligibility and to develop, review and revise the pupil's IEP. Meetings to determine eligibility and develop the IEP may be combined so long as the requirements for notice is met.
11. An initial eligibility meeting for pupils classified, in accordance with N.J.A.C. 14-3.5c, shall include the parent(s), legal guardian(s) and/or the adult pupil, the teacher having knowledge of the pupil's educational performance or school district's programs, the pupil, where appropriate, at least one member of the Child Study Team (CST) who participated in the evaluation, the case manager, other appropriate individuals at the discretion of the Superintendent or designee or the parent(s), legal guardian(s) and/or the adult pupil and, for an initial eligibility meeting, certified school personnel referring the pupil as potentially disabled or the Principal, or designee if they choose to participate.
12. Meetings to develop or review the pupil's IEP, for pupils classified in accordance with N.J.A.C. 14-3.5 or 3.6 shall include the following participants:
- a. The parent(s), legal guardian(s) and/or the adult pupil;
 - b. At least one regular classroom teacher knowledgeable about the pupil's educational performance or the school district's programs, if the pupil is or may be participating in a regular education classroom;
 - c. At least one special education teacher, or where appropriate, at least one special education provider, knowledgeable about the pupil's educational performance or the school district's programs;
 - d. At least one CST member who can interpret the instructional implications of evaluation results;
 - e. The case manager;
 - f. A member of school or school district administration, and/or a CST member who is qualified to provide or supervise the provisions of specially designed instruction to meet the unique needs of pupils with disabilities and is knowledgeable about the general education curriculum, and the availability of resources of the Board;
 - g. At the discretion of the parent(s), legal guardian(s) and/or the adult pupil or school district, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel as appropriate;

h. The pupil, where appropriate; and

i. If a purpose of the meeting is to consider transitional services, the pupil with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services, shall be invited to attend the IEP Team meeting.

13. Parent(s), legal guardian(s) and/or the adult pupil shall be given written notice of a meeting early enough to ensure that they shall have an opportunity to attend. Meetings shall be scheduled at a mutually agreed upon time and place, and the notice shall indicate the purpose, time, location and participants. If the parent(s), legal guardian(s) and/or the adult pupil cannot attend the meeting(s), the Superintendent, or designee, shall attempt to ensure parental, legal guardian(s) and/or the adult pupil participation, including the use of electronic conference equipment. Documentation shall be maintained of attempts to secure parental, legal guardian(s) and/or the adult pupil participation.

14. A meeting may be conducted without the parent(s), legal guardian(s) and/or the adult pupil in attendance, if the school district administration can document that it is unable to secure the participation of the parent(s), legal guardian(s) and/or the adult pupil. Participants at the IEP Team meeting shall be permitted to use an audio-tape recorder.

15. Upon attainment of the eighteenth birthday, adult pupils shall be given a copy of the special education laws and the procedural safeguards statement published by the New Jersey Department of Education. An adult pupil shall be given notice and participate in meetings. When requesting consent to conduct an initial evaluation, or for initial implementation of a special education program and related services for an adult pupil, consent shall be obtained from the adult pupil, and notice shall be provided to the adult pupil and his/her parent(s), and/or legal guardian(s).

D. Native Language

Written notice to the parent(s), legal guardian(s) and/or the adult pupil and parent conferences required by N.J.A.C. 6A:14, shall be conducted in the language used for communication by the parent(s), legal guardian(s) and/or the adult pupil unless it is clearly not feasible to do so.

1. Foreign language interpreters or translators, and sign language interpreters for the deaf, shall be provided, when necessary, by the school district at no cost to the parent(s), legal guardian(s) and/or the adult pupil.

2. If the native language is not a written language, the school district administration shall take steps to ensure the notice is translated orally, or by other means to the parent(s), legal guardian(s) and/or the adult pupil in his/her native language or other mode of communication, that the parent(s), legal guardian(s) and/or the adult pupil understands

the content of the notice, and there is written documentation that this provision has been met.

E. Protection in Evaluation Procedures

1. In conducting the evaluation, staff shall:

- a. Use a variety of assessment tools and strategies to gather relevant functional and developmental information. Information may be provided by the parent(s), legal guardian(s) and/or the adult pupil, and may assist in determining whether the child is a pupil with a disability and/or to determine the content of the pupil's IEP. This information may also be information related to enabling the pupil to be involved in and progress in the general education curriculum, or for preschool pupils with disabilities to participate in appropriate activities; and
- b. Not use any single procedure as the sole criterion for determining whether a pupil is a pupil with a disability, or determining an appropriate educational program for the pupil; and
- c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

2. The Superintendent shall ensure that evaluation procedures, including, but not limited to, tests, and other evaluation materials in accordance with N.J.A.C. 6A:14-3.4:

- a. Are selected and administered so as not to be racially and culturally discriminatory; and
- b. Are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so.

3. Any standardized tests that are administered, must have been validated for the purpose(s) for which they are administered by certified personnel trained in conformance with the instructions provided by their producer.

4. The pupil shall be assessed in all areas of the suspected disability.

5. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupils shall be provided.

6. Tests shall be selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments, the results accurately reflect the ability which that procedure purports to measure, rather than the impairment, unless that is the intended purpose of the testing.

7. The evaluation shall be conducted by a at least one evaluator of the multi-disciplinary team of professionals, consisting of at least two members of the CST, and where appropriate, other specialists. At least one member evaluator of the multi-disciplinary team shall be knowledgeable in the area of suspected disability.
8. A parent(s), legal guardian(s) and/or the adult pupil may request an independent evaluation if there is a disagreement with the evaluation provided by the school staff. Such evaluation shall be provided at no cost to the parent(s), legal guardian(s) and/or the adult pupil unless the school district initiates a due process hearing to show that its evaluation is appropriate, and a final determination to that effect is made following the hearing. Any independent evaluation purchased at public expense shall be conducted in accordance with N.J.A.C. 6A:14-3.4, and be obtained from another public school district, an Educational Services Commission, a Jointure Commission or a clinic or agency approved under N.J.A.C. 6A:14-5, or private practitioner, who is certified and/or licensed, where a license is required. Upon receipt of parental, legal guardian(s) and/or adult pupil request, the Board shall provide information about where an independent evaluation may be obtained.
9. An independent medical evaluation may be obtained in accordance with N.J.A.C. 6A:14-5.1(e).
10. Any independent evaluation submitted to the school district shall be considered in making decisions regarding special education and related services.

F. Mediation

1. Mediation is a voluntary process available to resolve disputes that arise from the application of Board policy or this regulation. Mediation is available to pupils age three through twenty-one, when there is a disagreement regarding identification, evaluation, classification, educational placement, or the provision of a free appropriate education. A request for mediation shall not be used to deny or delay the right to request a due process hearing.
2. If either party is unwilling to participate in mediation, a request for a formal due process hearing under N.J.A.C. 6A:14-2.7 may be made directly to the New Jersey Department of Education through the Office of Special Education Programs.
3. Either party may be accompanied and advised at mediation by legal counsel, or other person(s) with special knowledge or training with respect to the needs of pupil's with disabilities.
4. Mediation is available from the New Jersey Department of Education at the State level through the Office of Special Education Programs.
5. The mediation conference shall be held at a time and place reasonably convenient to the parties in the dispute.

6. If mediation results in agreement, the conclusions shall be incorporated into a written agreement signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made. Discussions that occur during the mediation process shall be confidential, and shall not be used as evidence in any subsequent due process hearings or civil proceedings. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation.

7. Pending the outcome of mediation, no change shall be made to the pupil's classification, program, or placement, unless both parties agree, or emergency relief as part of a request for due process hearing is granted by the Office of Administrative Law (OAL) in accordance with N.J.A.C. 6A:14-2.7(g), or as provided in 20 U.S.C. §1415(k)(7).

G. Due Process Hearings

1. A due process hearing is an administrative hearing conducted by an Administrative Law Judge (ALJ). For a pupil age three through twenty-one, a due process hearing may be requested when there is a disagreement regarding identification, classification, evaluation or educational placement, and/or the provision of a free appropriate public education to that pupil. For pupils above the age of twenty-one, any disputes regarding the provision of program and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

2. The Board or public agency responsible for the development of the pupil's IEP, may request a due process hearing when it is unable to obtain required consent to conduct an initial evaluation, implement an initial IEP or release pupil records. The school district shall request a due process hearing when it denies a written parental, legal guardian(s) and/or the adult pupil's request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5c.

3. A request for a due process hearing must be made in writing to the State Director of the Office of Special Education Programs, New Jersey Department of Education with a copy to the other party. The written request must note that a copy has been sent to the other party. The written request must include the pupil's name, address, name of the school the pupil is attending, and shall state the specific issues in dispute, relevant facts, and the relief sought.

4. The following procedure is followed by the New Jersey Department of Education. The Office of Special Education Programs, upon receipt of a request for a due process hearing must comply with N.J.A.C. 6A:14-2.7(d).

- a. The Office of Special Education Programs shall acknowledge receipt of the request, and provide information regarding free and low cost legal services to the parent(s), legal guardian(s) and/or the adult pupil and the availability of mediation;
- b. Upon receiving the acknowledgment from the Office of Special Education Programs, the parties shall begin to exchange relevant records and information in accordance with the time limits in N.J.A.C. 6A; and
- c. Within seven calendar days of receipt of the written request, the Office of Special Education Programs, shall conduct a transmittal conference;
 - (1) The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and listing possible witnesses;
 - (2) The parties may agree to mediation at the transmittal conference in accordance with the following:
 - (a) The petitioner withdraws the request for a due process hearing;
 - (b) The mediator is available to conduct the mediation;
 - (c) If no agreement is reached as a result of mediation, the petitioner may resubmit the request for the due process hearing, so the transmittal conference can continue;
 - (d) If the mediator is unable to conduct the mediation at the transmittal conference, a mediation conference shall be scheduled within twenty calendar days of receipt of the original request for the due process hearing.
 - (3) The Board shall ensure that the Superintendent, or designee with the authority of the Superintendent, participates in the transmittal conference;
 - (4) The transmittal conference shall be scheduled at a time and place reasonably convenient to the parties. At the discretion of the representative from the Office of Special Education Programs, the conference may be conducted by telephone;
 - (5) The transmittal conference may result in either withdrawal or transmittal to the OAL in accordance with N.J.A.C. 6A. If the conference results in transmittal to the OAL:
 - (a) The representative from the Office of Special Education Programs, shall prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence lists and witness list for each party. This document and the transmittal form shall be immediately forwarded to the OAL and to the parties.
 - (b) The representative from the Office of Special Education Programs shall telephone the clerk of the OAL, and schedule a hearing date which shall be no later than fourteen

calendar days from the date of the conference, unless a later date is granted by the ALJ at the request of either party. If the parent(s), legal guardian(s) and/or the adult pupil does not participate in the conference, and is not available to schedule a hearing date, or the parties cannot agree to hearing dates, a date shall be assigned by the OAL within the required timelines.

5. Subject to adjournments granted by the ALJ, a final decision shall be rendered not later than forty-five days after receipt of the request for a hearing. The decision of the ALJ is final, binding on both parties, and to be implemented without delay, unless stayed in accordance with N.J.A.C. 1:6A-18.4.

6. Either party may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request in accordance with N.J.A.C. 1:6A-12.1. The request must be supported by an affidavit, or notarized statement specifying the basis for the request for emergency relief. The applicant must provide copies of the request to the other party, and the request must note that a copy was sent to the other party.

7. Prior to transmittal of a request for a due process hearing to the OAL, application for emergency relief must be made to the Office of Special Education Programs, New Jersey Department of Education. After transmittal of a request for a due process hearing, any application for emergency relief must be made directly to the OAL.

8. Emergency relief may be requested in accordance with N.J.A.C. 1:6A-12.1. Emergency relief may be requested if school personnel maintains that it is dangerous for the pupil with a disability to be in a current placement. Emergency relief may be requested by the parent(s), legal guardian(s) and/or the adult pupil if he/she disagrees with a decision related to disciplinary action, or with a decision related to placement in an interim alternative educational setting by school officials for behavior involving drugs or weapons in accordance with U.S.C. §1415(k)(6)(A).

9. If the school district or public agency responsible for implementing the IEP fails to implement a hearing decision of the OAL, a request for enforcement may be made by the parent(s), legal guardian(s) and/or the adult pupil. The request must be made in writing to the State Director of the Office of Special Education Programs, New Jersey Department of Education. Upon receipt of this request, implementation of the decision shall be assured.

10. Pending the outcome of a due process hearing, or any administrative or judicial proceeding, no change shall be made to the pupil's classification, program, or placement unless both parties agree or emergency relief as part of a request for a due process hearing is granted by the OAL pursuant to this regulation or as provided in 20 U.S.C. §1415(k)(7).

11. Any party may appeal the decision of an ALJ in accordance with N.J.A.C. 1:6A-18.3.

H. Discipline/Suspensions/Expulsion Discipline of Students with Disabilities Change of Placement for Disciplinary Removals for the Purposes of Removal of a Pupil with a Disability from the Pupil's Current Educational Placement

1. For disciplinary reasons, school officials may order the removal of a pupil with a disability from his/her current educational placement to an interim alternative educational setting, another setting, or a suspension without the provision of educational services for up to ten consecutive or cumulative school days in a school year. Such suspensions are subject to the same school district procedures as nondisabled pupils. However, at the time of removal, the building principal shall forward written notification, and a description of the reasons for such action to the case manager. A change of placement occurs if the removal is for more than ten consecutive school days; or
2. Disciplinary action initiated by the school district which involves removal to an interim alternative educational setting, suspension of more than ten consecutive or cumulative school days in a school year or expulsion of a pupil with a disability, must be in accordance with 20 U.S.C. §1415(k), as indicated in paragraphs a. through i. below. The pupil is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the pupil is removed, and the proximity of the removals to one another.

[The IEP Team shall make the determination whether a series of short-term removals constitutes a change of placement.]

Disciplinary Actions Authority of School Personnel

- a. School personnel may order: a change in the placement of a pupil with a disability:
 - (1) To an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days (to the extent such alternatives would be applied to children without disabilities); and To the extent removal would be applied to pupils without disabilities, the removal of a pupil with a disability from the pupil's current placement for not more than ten consecutive school days for any violation of school rules, and additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement as described in H.2 above). After a pupil with a disability has been removed from his/her current placement for more than ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under C.F.R. §300.121(d); and
 - (2) A change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a pupil without a disability would be subject to discipline, but for not more than forty-five days if:

- (a) The pupil carries a weapon to school, or to a school function under the jurisdiction of a State or a local educational agency; or
- (b) The pupil knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, or a school function under the jurisdiction of a State or local educational agency.

Behavioral Assessment

b. Either before or not later than ten business days after taking a disciplinary action described in paragraph (a) above: either first removing the pupil for more than ten school days in a school year or commencing a removal that constitutes a change of placement: under paragraphs H.(1) and H.(2) including action described in paragraph a.(2)

(1) If the CST school district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the pupil before the behavior that resulted in the suspension removal described in paragraph (a) above, the case manager shall convene an IEP Team meeting to develop a an behavioral intervention assessment plan. to address that behavior; or

(2) If the pupil already has a behavioral intervention plan, the IEP Team shall review the plan and its implementation, and modify the plan and its implementation it, as necessary, to address the behavior.

(3) As soon as practicable after developing the plan as described in b.(1) and completing the assessments required by the plan, the school district shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(4) If subsequently, a pupil with a disability who has a behavioral intervention plan and who has been removed from the pupil's current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementations, to the extent the team determines necessary.

Change in Placement Authority of the Hearing Officer

c. A hearing officer may order a change in the placement of a pupil with a disability to an appropriate interim alternative educational setting for not more than forty-five days if the hearing officer in an expedited due process hearing:

(1) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such pupil is substantially likely to result in injury to the pupil or to others;

- (2) Considers the appropriateness of the pupil's current placement;
- (3) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the pupil's current placement, including the use of supplementary aids and services; and
- (4) Determines that the interim alternative educational setting meets the requirements of paragraph d.(1) and d.(2) below.

Alternate Educational Determination of Setting

d. The interim alternative educational setting described in subparagraph a.(2) above shall be determined by the IEP Team;

Any interim alternative educational setting in which a pupil is placed under paragraph a. or b. above shall:

- (1) Be selected so as to enable the pupil to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the pupil's current IEP, that shall enable the pupil to meet the goals set out in that IEP; and
- (2) Include services and modifications designed to address the behavior identified described in paragraph H.(1) a.(2) or paragraph H.(2) c. above so that it does not recur are designed to prevent the behavior from recurring.

Manifestation Determination

e. If a disciplinary action is contemplated regarding behavior as described in paragraph H.(1) or H.(2) a.(2) and c. above, for a behavior of a pupil with a disability, or if a disciplinary action involving a change of placement for more than ten days is contemplated for a pupil or involving a removal that constitutes a change of placement for a child with a disability pursuant to a.(2) and C. above who has engaged in other behavior that violated any rule or code of conduct of the school district that applies to all pupils, then:

- (1) Not later than the date on which the decision to take that action is made, the parent(s), legal guardian(s) and/or the adult pupil shall be notified of that decision, and of all provided the procedural safeguards notice accorded under the laws and this regulation and policy; and
- (2) Immediately, if possible, but in no case later than ten school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the pupil's disability and the behavior subject to the disciplinary action.

f. A review described in subparagraph e. above shall be conducted by the IEP Team and other qualified personnel in a meeting. In carrying out a review described in paragraph e. above, the IEP Team and other qualified personnel may determine that the behavior of the pupil was not a manifestation of such the pupil's disability only if the IEP Team and other qualified personnel:

(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information including evaluation and diagnostic results, including such results or other relevant information supplied by the parent(s), the legal guardian(s) of the pupil and/or the adult pupil; observations of the pupil; and the pupil's IEP and placement; and

(2) Then determines that:

(a) In relationship to the behavior subject to disciplinary action, the pupil's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the pupil's IEP and placement;

(b) The pupil's disability did not impair the ability of the pupil to understand the impact and consequences of the behavior subject to disciplinary action; and

(c) The pupil's disability did not impair the ability of the pupil to control the behavior subject to disciplinary action.

(3) If the IEP team and other qualified personnel determine that any of the standards in (2) above were not met, the behavior must be considered a manifestation of the pupil's disability.

(4) The review described in e. above may be conducted at the same IEP meeting that is convened under b. above.

(5) If, in the review in f. above, the school district identifies deficiencies in the pupil's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

Determination That the Behavior Was Not a Manifestation of Disability

g. If the result of the review described in subparagraph e. above is a determination that the behavior of the pupil with a disability was not a manifestation of the pupil's disability, the relevant disciplinary procedures applicable to pupils without disabilities may be applied to the pupil in the same manner which they would be applied to a pupil without disabilities, except as provided in 20 U.S.C. §1412(a)(1). 20 U.S.C. §1412(a)(1) requires the school district to provide a free appropriate public education to all children with disabilities between the ages of three and twenty-one, inclusive, including children with disabilities who have been suspended or expelled from school. the district need not

provide services during periods of removal described under a.(1) above to a pupil with a disability who has been removed from his/her current placement for ten school days or less in that school year, if services are not provided to a pupil without disabilities who has been similarly removed (C.F.R. §300.121 (d)).

h. If the school district or other public agencies initiates disciplinary procedures applicable to all children pupils, the school district shall ensure that the special education and disciplinary records of the pupil with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

Except as provided in j. below, 20 U.S.C. §1415(j) applies if a parent requests a hearing to challenge a determination, made through the review described in e., that the behavior of the pupil was not a manifestation of the pupil's disability.

Parent Appeal

i. If the pupil's parent(s), legal guardian(s) and/or the adult pupil disagrees with a determination that the pupil's behavior was not a manifestation of the pupil's disability, or with any decision regarding placement, the parent(s), legal guardian(s) and/or the adult pupil may request a hearing. The Superintendent or designee shall arrange for an expedited hearing in any case described in this regulation when requested by a parent(s), legal guardian(s) and/or the adult pupil.

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the school district has demonstrated that the pupil's behavior was not a manifestation of such pupil's disability consistent with the requirements of paragraph f.(1) and f.(2) above.

(2) In reviewing a decision under paragraph a.(2) to place the pupil in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph c. above.

Placement During Appeals

j. When a parent(s), legal guardian(s) and/or the adult pupil requests a hearing or an appeal regarding a disciplinary action described in paragraph a.(2) above or paragraph c. above to challenge the interim alternative educational setting or the manifestation determination, the pupil shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period provided for in paragraph a.(2) or c. whichever occurs first, unless the parent(s), legal guardian(s) and/or the adult pupil and the school district agree otherwise;

(1) If a pupil is placed in an interim alternative educational setting pursuant to paragraph a.(2) above or paragraph c. above and the CST school personnel proposes to change the pupil's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the pupil

shall remain in the current placement (the pupil's placement prior to the interim alternative educational setting), except as provided in paragraph f.(1) and f.(2) (2) below;

(2) If the IEP Team school personnel maintains that it is dangerous for the pupil to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the school district may request an expedited due process hearing;

(3) In determining whether the pupil may be placed in the alternative educational setting, or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph c. above;

(4) A placement ordered pursuant to j.(3) above may not be longer than forty-five days;

(5) The school district may request an expedited due process hearing pursuant to j.2 above whenever school personnel maintain that it is dangerous for the pupil to be in the current placement.

Protections for Children Not Yet Eligible for Special Education and Related Services

k. A pupil who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in paragraph a. above, may assert any of the protections provided for in the law, this regulation or any related policy or regulation, if the school district had knowledge (as determined in accordance with this paragraph) that the pupil was a pupil with a disability before the behavior that precipitated the disciplinary action occurred.

(1) The school district is deemed to have knowledge that a pupil is a pupil with a disability if the parent(s), legal guardian(s) of the pupil and/or the adult pupil has have expressed concern in writing (unless the parent(s), legal guardian(s) and/or the adult pupil is illiterate or has a disability that prevents compliance with the requirements contained in this clause) (or orally if the parent does not know how to write or has a disability that prevents a written statement) to school personnel that the pupil is in need of special education and related services, if the behavior or performance of the pupil demonstrates the need for such services, if the parent(s), legal guardian(s) of the pupil and/or the adult pupil has requested an evaluation of the pupil pursuant to federal or State laws, regulation and/or policy, or if the teacher of the pupil, or other personnel of the school district, has expressed concern about the behavior or performance of the pupil to school district administrators for special education the Director of Special Education or to other personnel in accordance with the district's child find or special education referral system;

(2) The school district would not be deemed to have knowledge under (1) above if as a result of receiving the information specified in (1) above, the district either conducted an evaluation in accordance with federal or State laws, regulation and/or policy and

determined that the pupil was not a pupil with a disability or determined that an evaluation was not necessary and provided notice to the pupil's parent(s), legal guardian(s), and/or the adult pupil of its determination consistent with federal or State laws and/or policy and regulation;

(23) If the school district does not have knowledge that a pupil is a pupil with a disability (in accordance with paragraph k.(1)) and k.(2)) prior to taking disciplinary measures against the pupil, the pupil may be subjected to the same disciplinary measures as measures applied to pupils without disabilities who engaged in comparable behaviors consistent with paragraph (34) below;

(34) If a request is made for an evaluation of a pupil during the time period in which the pupil is subjected to disciplinary measures under paragraph a. or b c. above, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the pupil remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the pupil is determined to be a pupil with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parent(s), legal guardian(s) and/or the adult pupil, the school district shall provide special education and related services in accordance with the provision of the federal and State law, regulation and policy. except that, pending the results of the evaluation, the pupil shall remain in the educational placement determined by the school principal.

l. Nothing in this regulation shall be construed to prohibit the school district from reporting a crime committed by a pupil with a disability to appropriate authorities, or to prevent State or other law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and State law to crimes committed by a pupil with a disability;

When the school district reports a crime committed by a pupil with a disability, the school district shall ensure that copies of the special education and disciplinary records of the pupil are transmitted for consideration by the appropriate authorities to whom it reports the crime. The school district when reporting a crime may transmit copies of the pupil's special education and disciplinary records only to the extent that the transmission is permitted by the Family Rights and Privacy Act.

m. For purposes of this regulation and the related policy, the following definitions apply:

(1) **CONTROLLED SUBSTANCE**--The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in §202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) **ILLEGAL DRUG**--The term "illegal drug"--

(a) Means a controlled substance; but

(b) Does not include such a 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.

(3) SUBSTANTIAL EVIDENCE--The term "substantial evidence" means beyond a preponderance of the evidence.

(4) WEAPON--The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of §930 of Title 18, U.S.C.

I. Reimbursement for Unilateral Placement by Parents

1. Except as provided in N.J.A.C. 6A:14-6.1(a), the Board is not required to pay for the cost of education, including special education and related services, of a pupil with a disability if the school district made available a free, appropriate public education, and the parent(s) and/or legal guardian(s) elected to enroll the pupil in a nonpublic school or approved private school for the disabled.

2. If the parent(s), legal guardian(s) of a pupil with a disability, and/or the adult pupil who previously received special education and related services from the school district of residence, enroll the pupil in a nonpublic or approved private elementary or secondary school without the consent of or referral by the school district, an ALJ may require the school district to reimburse the parent(s), legal guardian(s) and/or the adult pupil for the cost of that enrollment, if the ALJ finds that the school district had not made available a free appropriate public education available to that pupil in a timely manner prior to that enrollment.

3. The parent(s), legal guardian(s) and/or the adult pupil must provide notice to the school district of their concerns and their intent to enroll the pupil in a nonpublic school at public expense. The cost of reimbursement requested by the parent(s), legal guardian(s) and/or the adult pupil to be paid by the school district may be reduced or denied:

a. If at the most recent IEP Team meeting that the parent(s), legal guardian(s) and/or the adult pupil attended prior to the removal of the pupil from the school district, the parent(s), legal guardian(s) and/or the adult pupil did not inform the IEP Team that they were rejecting the IEP proposed by the school district;

b. At least ten business days (including any holidays that occur on a business day) prior to the removal of the pupil from the public school, the parent(s), legal guardian(s) and/or the adult pupil did not give written notice to the Board of their concerns or intent to enroll their child in a nonpublic school;

c. If prior to the parent(s), legal guardian(s) removal of the pupil and/or the adult pupil's removal of him/herself from the public school, the school district proposed a

reevaluation of the pupil and provided notice according to N.J.A.C. 6A:14-2.3(e) and (f), but the parent(s), legal guardian(s) and/or the adult pupil did not make the pupil available for such evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s), legal guardian(s) and/or the adult pupil.

4. The cost of reimbursement for enrollment in a nonpublic school may not be reduced or denied if the parent(s), legal guardian(s) and/or the adult pupil failed to provide the required notice described in 3.a. and b. above if:

a. The parent(s), legal guardian(s) and/or the adult pupil is illiterate and cannot write in English;

b. Compliance with the notice requirements in 3.a. and b. above would likely result in physical or serious emotional harm to the pupil;

c. The school district prevented the parent(s), legal guardian(s) and/or the adult pupil from providing such notice; or

d. The parent(s), legal guardian(s) and/or the adult pupil had not received written notice in accordance with N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirements that is specified in 3.a. and b. above.