



Special Education Overview of Select Legal Requirements

New Jersey Department of Education
Office of Special Education

August 2013

General Overview

N.J.A.C. 6A:14

- Students with disabilities are entitled to a free, appropriate public education or a “FAPE.”
- Under the Individuals with Disabilities Education Act (IDEA), an appropriate public education means specially designed instruction to meet the unique needs of the student with a disability.
- N.J.A.C. 6A:14 are the implementing regulations in the state.

Subchapter 2. Procedural Safeguards

Location, Referral, Identification

- Each school district must have written procedures for locating, referring and identifying students ages three through 21, including students in nonpublic schools who may have a disability due to physical, sensory, emotional, communication, cognitive or social difficulties.
- The procedures shall include:
 - Utilizing strategies identified through the I&RS program as well as other general education strategies;
 - Referral by instructional, administrative and other professional staff of the local school district, parents and state agencies;
 - Evaluation to determine eligibility for special education and related services.

Subchapter 3. Services

Location, Referral, Identification

- A referral may be made by professional staff of the district, parents and State agency employees. [3.3(a)3ii]
- When a referral is received, the school district must conduct an identification meeting within 20 calendar days to determine whether an evaluation is warranted.
- A parent may make a direct referral by submitting a written request for an evaluation to the school district.
 - When a parent makes a direct referral a meeting must be held within 20 calendar days

Subchapter 2. Procedural Safeguards

IEP Team

- The IEP team develops and revises the student's program as necessary and required throughout the year.
- The team includes:
 - the parent;
 - Not less than one general education teacher of the student, if the student is or may be participating in general education;
 - Not less than one special education teacher or special education provider of the student;
 - the case manager;
 - a representative of the responsible school district;
 - at the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student;
 - the student where appropriate.

Subchapter 3. Services

Child Study Team

- The child study team (CST) conduct evaluations and participate in the determination of eligibility for special education and related services.
- The CST includes:
 - a school psychologist;
 - a learning disabilities teacher-consultant; and
 - a school social worker.
- Must be employees of a district board of education.

Subchapter 3. Services Evaluation

- Consent
 - Parental consent must be obtained prior to conducting an evaluation. [2.3(a)a]
- Screening
 - Screening a student to determine educational strategies does not constitute an evaluation for the purpose of eligibility. [3.4(d)]
- Timeline
 - Repeated failure to produce the student for an evaluation negates the time period to complete the evaluation. [3.4(e)1]
 - Time to complete the evaluation may be extended by agreement if the student transfers during the process. [3.4(e)2]

Subchapter 3. Services

Initial Evaluation

- ❑ Evaluate in the language most likely to yield accurate information. [3.4(f)1]
- ❑ Shall include at least two assessments. [3.4(f)]
- ❑ Shall be conducted by at least two members of the child study team. [3.4(f)]
- ❑ Shall include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child with limited English proficiency, assessment of the student's communication needs and assessment of the need for assistive technology devices and services. [3.4(f)4]

Subchapter 3. Services

Outside Reports

- Each report given to the child study team by the parent shall be reviewed and considered by the child study team member or related service provider with relevant knowledge or expertise. [3.4(i)]
- The school district may utilize a report or component as a required assessment if it was conducted within one year and it meets the regulatory requirements. [3.4(i)]

Subchapter 2. Procedural Safeguards

Independent Evaluations

- Parents are limited to one independent evaluation with respect to each initial evaluation or reevaluation conducted by the school with which the parent disagrees.
- The parent cannot, after the request for an independent evaluation is granted (or denied by an ALJ) and the requested assessment(s) is/are provided, request and obtain another independent evaluation at public expense until a new evaluation is completed by the school district.

Subchapter 2. Procedural Safeguards Independent Evaluations

- New Jersey OSEP was informed via a memorandum from the USDE on March 28, 2012 that N.J.A.C. 6A:14-2.5(c) violates the IEE provisions in 34 CFR §300.502.
- NJOSEP was directed to eliminate the provision that, “If a parent seeks an independent evaluation in an area not assessed as part of the initial evaluation or a reevaluation, the school district shall first have the opportunity to conduct the requested evaluation.”
- As a result, the NJOSEP issued guidance on May 9, 2012 to all Local Education Agencies (LEAs) regarding the required change.

Subchapter 2. Procedural Safeguards

Independent Evaluations

- Memorandum states that, “districts may no longer limit the parents’ rights to an IEE by first conducting an assessment in an area not already assessed by the initial evaluation or reevaluation before the parents’ request is granted. Rather, when a parental request for an independent evaluation is received, a district must provide the evaluation at no cost to the parent, 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.”
- NJOSEP is in the process of developing guidance around IEEs that will address LEA policies concerning cost and evaluator qualifications.

Subchapter 3. Services

Determination of Eligibility

- A student shall be determined eligible and classified under this chapter when it is determined that the student has one or more of the disabilities defined in this chapter; the disability adversely affects the student's educational performance and the student is in need of special education and related services. [3.5(c)]
- Fourteen (14) eligibility categories [3.5 (c) 1-14]

Subchapter 3. Services

Individualized Education Program (IEP)

- **Required Components**
 - Present levels of academic achievement and functional performance [3.7(e)1]
 - Detailed measurable annual academic and functional goals [3.7(e)2]
 - Such special education and related services shall be based, to the extent practicable, on peer reviewed research [3.7(e)4]
 - Transition planning information which is required beginning at age 14
 - At age 16, measurable postsecondary goals related to training, education, employment and independent living [3.7(e)12]
 - Information describing participation in extracurricular and nonacademic activities for students in out-of-district placements [3.7(e)17]
 - For those students in a separate setting the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement [3.7(k)]

Subchapter 3. Services

Related Services

- Are provided to a student with a disability when required for the student to benefit from the educational program. [3.9(a)]
- Shall be provided by appropriately certified and/or licensed professionals as specified in the IEP and may include but are not limited to counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services, and speech-language services. [3.9(a)]
- Nursing Services
 - Provided only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the IEP [3.9(a)8]
- Medical Services
 - Provided for diagnostic and evaluation purposes only [3.9(a)9]

Subchapter 3. Services

Related Services

- Specialists in behavior modification or other disciplines for which there is no license required are addressed in 3.9(a) 11.
 - The regulation permits persons who fall within the scope of the regulation to provide services by developing the program and, when appropriate, implementing such programs either on their own or by supervising aides and other persons who work with the student in accordance with the plan developed by the specialist.
 - The specialist and all staff working with the specialist to implement programs must be supervised by appropriate school district staff in accordance with the provisions of the regulation.

Subchapter 4. Programs & Instruction

Placement in the Least Restrictive Environment

- Students with disabilities shall be educated in the least restrictive environment. [4.2(a)]

- All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
 - Curricular or instructional modifications or specialized instructional strategies
 - Assistive technology devices and services
 - Teacher aides
 - Related services
 - Integrated therapies
 - Consultation services
 - In-class resource programs [4.3(a)1-7]

Subchapter 4. Programs & Instruction

Placement in the Least Restrictive Environment

- For a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered annually. [4.2(a)4]
- A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum. [4.2(a)9]
- Placement in a program is based on the individual needs of the student. [4.2(a)10]
- When determining the restrictiveness of a particular program option, such determinations are based solely on the amount of time a student with disabilities is educated outside the general education setting. [4.2(a)11]

Subchapter 4. Programs & Instruction

Home Instruction

- Provided by appropriately certified teacher of students with disabilities or for the subject or level in which instruction is given. [4.8(a)3]
- Home instruction due to illness is included in N.J.A.C. 6A:16.
- Must keep a written record, including dates and times during which home instruction is provided. [4.8(a)3]
- Must provide the instruction in a location conducive to learning, considering the disability and circumstances of the student. [4.8(a)5]
- Parent shall be consulted in determining the appropriate location. [4.8(a)5]
- If the student is repeatedly not made available by the parent, consider whether the student is truant in accordance with N.J.S.A. 18A:38-27 [4.8(a)6].

Subchapter 4. Programs & Instruction

Extended School Year Services

- ❑ The IEP team makes an individualized determination regarding the need for ESY services. [4.3(c)]
- ❑ Must consider regression and recoupment. [4.3(c)]
- ❑ There is no limit, minimum or maximum, on the type, amount or duration of services. Cannot be provided based upon a child's disability category. [4.3(c)1]
- ❑ The program must be based on the student's needs not the district's resources.
- ❑ Cannot have a "one size fits all" program.

Subchapter 4. Programs & Instruction

Graduation

- A summary of performance (SOP) is required when a student graduates or exceeds the age of eligibility. [4.11(b)4]
 - SOP should include a written summary of academic achievement and functional performance prior to the date of the student's graduation or the conclusion of the school year in which the student exceeds the eligibility [4.11(b)4]
 - Summary shall include recommendations to assist the child in meeting his/her postsecondary goals [4.11(b)4]
- If the school the student is attending declines to issue a diploma to the student, the district of residence shall issue a diploma if the student has satisfied all state and local graduation requirements, as specified in the student's IEP. [4.11(c)1]

Subchapter 4. Programs & Instruction

Graduation

- Alicia's Law N.J.S.A. 18A:7C-5.2
 - Provides that a board of education must permit a special education student whose IEP calls for continued services beyond the fourth year of high school to participate in commencement ceremonies with his or her graduating class and to receive a certificate of attendance, provided that the student has attended four years of high school.
 - DOE encouraged this practice in the past, now it is legally required.



Subchapter 2. Procedural Safeguards

Parental Consent, Notice, Participation, Meetings

- **Consent is now required for:**
 - Accessing public benefits or public insurance and/or private insurance [2.3(a)5; 34 CFR §300.154(d)(2)(iv)]
 - Excusal of an IEP team member from an IEP meeting [2.3(a)6]
 - Amending an IEP without a meeting [2.3(a)7]
 - Waiver of a reevaluation [2.3(a)8]
 - Model forms available on DOE website

Subchapter 2. Procedural Safeguards

Parental Consent, Notice, Participation, Meetings

- If a parent refuses to provide consent for an initial evaluation or reevaluation:
 - A school district **may, but is not required to, request a due process hearing to compel consent.** [2.3(c)]
 - If a parent does not provide consent for an initial evaluation or reevaluation, the district **is not in violation of its child find responsibilities or its obligation to conduct an evaluation or a reevaluation** of a child who may be a child with a disability regardless of whether the district seeks a due process hearing to compel parental consent.

Subchapter 2.

Revocation of Consent for Services

- ❑ Federal Regulations implementing IDEA were amended effective December 31, 2008.
- ❑ Consent for implementation of services may be revoked by a parent, in writing, at any time. [2.3(e)]
- ❑ Mediation or a Due Process Hearing may no longer be used by a school district to seek to obtain the parental consent.

Subchapter 2

Revocation of Consent for Services

- **When consent is revoked (in writing)**
 - When a parent revokes consent for special education and related services, the school district shall provide written notice to the parent within ten days of receipt of the revocation.
 - 15 days after written notice is provided to the parent, the student becomes a general education student and no longer receives services.
 - The district shall not file for a due process hearing seeking to overturn the parent's determination.

Subchapter 2.

Revocation of Consent for Services

- Model written notices were provided to all school districts and are available on our website.
 - Model notices inform the parent that the student will become a general education student after 15 days unless they inform the school district that they no longer wish to revoke consent.
 - The student is thereafter treated as a general education student for all purposes, including discipline.
 - If the parent changes their mind after the 15 days, they must make a request for an initial evaluation. Eligibility cannot be determined or services started until the evaluation process is completed from step one.

Subchapter 2. Procedural Safeguards Discipline

- For disciplinary reasons, school officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year [2.8(a)]
- At the time of the removal the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parents [2.8(a)]



Subchapter 2. Procedural Safeguards Discipline

- ❑ School district personnel may, on a case-by-case basis, consider any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a school code of conduct. [2.8(b)]

Subchapter 2. Procedural Safeguards

Discipline

- What constitutes a removal?
 - Suspensions from school – removal to an interim alternative educational placement
 - Expulsions
 - Suspension from transportation (when as a result, the child does not attend school)
 - In-school suspension, unless the program provides the following:
 - Opportunity for students to progress in the general education curriculum
 - Services and modifications specified in the IEP
 - Interaction with peers commensurate with the IEP
 - Services do not penalize the student with regard to grades, credit or attendance.
 - Certified teacher (general or special education)

Subchapter 2. Procedural Safeguards Discipline

- For Removals of Ten (10) or fewer days
 - Student is subject to the same disciplinary policy as non-disabled students
 - Services shall be provided within five school days of the suspension [6A:16-7.2(a)5]
 - Case manager and student's parent are notified of each removal (in writing, including reason for removal and number of days) [2.8(a)]
- Tracking system implemented

Subchapter 2. Procedural Safeguards Discipline

- What services must be provided?
 - State and federal regulations require that students with disabilities who are suspended or expelled are entitled to receive a free appropriate public education [6A:14-1.1(b)] [34 C.F.R. §300.530(d)]
 - Students with disabilities are provided services in the same manner as general education students [6A:14-2.8(a)]
 - Students with disabilities receive services consistent with the IEP [6A:16-7.2(a)5ii]

Subchapter 2. Procedural Safeguards Discipline

- For removals of more than ten (10) consecutive days
 - This is considered an automatic change in placement
 - Must provide the parent with a copy of PRISE
 - On the date a decision is made to initiate a removal of a student that constitutes a change in placement because of a violation of a code of student conduct [34 C.F.R. §300.530(h)]
- Convene a meeting of the relevant IEP team members including the parent
 - Conduct a manifestation determination meeting within 10 school days of the decision to remove the student
 - For additional suspensions of more than 10 consecutive days in the same school year, the manifestation determination meeting must be conducted prior to the removal.

Subchapter 2. Procedural Safeguards Discipline

- Manifestation Determination Meeting [34 CFR §300.530(e)]
 - Relevant members of the IEP team in consultation with the student's parent determine whether the behavior was or was not a manifestation of the student's disability.
 - If the behavior IS a manifestation of the disability:
 - May NOT suspend (remove) the student
 - May change the student's program and/or placement (IEP team makes the determination)
 - Must review the BIP, if no BIP then conduct an FBA
 - If the behavior IS NOT a manifestation of the disability
 - May suspend (remove) the student
 - Must continue to provide educational services
 - As appropriate
 - Review BIP and as appropriate conduct an FBA

Subchapter 2. Procedural Safeguards Discipline

- For removals of more than ten (10) cumulative days
 - School officials in consultation with the student's case manager shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.
 - Removals constitute a pattern if they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed and the proximity of the removals to each other. [2.8(c)]

Subchapter 2. Procedural Safeguards Discipline

- For removals of more than ten (10) cumulative days
 - If school officials determine that a change of placement has occurred:
 - Must provide the parents with a copy of PRISE.
 - Must convene a meeting of the relevant IEP team members to conduct a manifestation determination meeting.
 - Follow relevant procedures discussed above depending upon the outcome of the manifestation determination meeting.

Subchapter 2. Procedural Safeguards

Discipline

- For removals of more than ten (10) cumulative days
 - If school officials determine that a change of placement has not occurred:
 - The student may be suspended but services must be provided.
 - School personnel must consult with the child's teacher to determine the extent of the services provided.
 - As appropriate, review the BIP and/or conduct an FBA.

Subchapter 2. Procedural Safeguards Discipline

- Appeals of Discipline Decisions
 - A parent may challenge the following:
 - When there is a disagreement between the district and the parent regarding whether a series of removals is a change in placement;
 - The outcome of a manifestation determination meeting; and/or
 - The removal of the student to an interim alternative educational setting.
 - When an appeal has been filed by the parent, the student must remain in the interim alternative educational setting pending the decision of the hearing officer OR until the expiration of the time period for the suspension, whichever comes first, unless the parent and the district agree otherwise.

Subchapter 2. Procedural Safeguards

Discipline

- **45 Day Removals [34 C.F.R. 300.530(g)]**
 - School personnel may remove a student to an interim alternative educational setting for an automatic 45 days in cases involving:
 - Drugs
 - Weapons
 - Serious bodily injury
 - **For all automatic 45 day removals**
 - Provide PRISE to the parent
 - Convene a meeting of relevant members of the IEP team
 - Conduct a manifestation determination meeting (the school is permitted to remove a child with a disability to an IAES for not more than 45 calendar days without regard to whether the behavior is determined to be a manifestation of the child's disability.)
 - If behavior is a manifestation, must review BIP and/or conduct FBA
 - If behavior is NOT a manifestation, as appropriate (case by case basis), review BIP and/or conduct FBA

Subchapter 2. Procedural Safeguards

Dispute Resolution

- **Due Process Hearing**
 - A due process hearing is a hearing conducted by an administrative law judge (ALJ) at the Office of Administrative Law (OAL). [2.7(a)]
 - For students age three through 21, may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free appropriate public education, or disciplinary action. [2.7(a)]
 - The request must be made within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint. [2.7(a)1]



Subchapter 2. Procedural Safeguards Dispute Resolution

□ Due Process Hearing

- Parties may present evidence and confront, cross-examine, and compel the attendance of witnesses.
- Parties may subpoena witnesses.
- Student may be present at the hearing.
- Final decision will be issued following the hearing.

Subchapter 2. Procedural Safeguards

Dispute Resolution

- Resolution Period
 - Within 15 days of receipt of a due process complaint, the district must convene a resolution meeting.
 - Parties can agree to mediation as an alternative to the resolution session.
 - If the district cannot secure the parent's participation in the resolution session, after reasonable efforts have been made and documented, at the end of the 30-day period, it may request that a hearing officer dismiss the parent's due process complaint.
 - If the district fails to schedule and conduct the resolution session, the parent may seek the intervention of an ALJ to begin the due process timeline. [2.7(h)]
 - If the dispute is not resolved within 30 days of the receipt of the complaint, the due process hearing timeline begins.
 - Parties can agree to waive the resolution period. Must be done in writing. [2.7(h)9]

Subchapter 2. Procedural Safeguards

Dispute Resolution

- Enforcement of OAL Decisions
 - Either party can seek enforcement through a State court of competent jurisdiction or a District court.
 - Parents can request an enforcement through the Office of Special Education (OSE).
 - Request must be made within 90 days based upon the date the requirement was to occur.
 - If it is determined that the district has failed to implement the decision or part of the decision, the OSE shall order the district to implement the decision as appropriate. [2.7(t)]

Subchapter 2. Procedural Safeguards

Dispute Resolution

- **Types of Due Process Hearings**
 - **Due Process**
 - Involves a disagreement regarding the identification, evaluation, reevaluation, classification, educational placement, the provision of a free appropriate public education of a student ages three through 21
 - **Expedited Due Process**
 - Discipline matters only
 - **Application for Emergent Relief**
 - Emergent relief is an interim (temporary) decision on an issue that is related to a due process hearing. This decision is made pending the final decision in the case and must involve issues involving a break in the delivery of service, disciplinary action, placement pending the outcome of due process proceedings and graduation or participation in graduation ceremonies. [2.7]

Subchapter 2. Procedural Safeguards

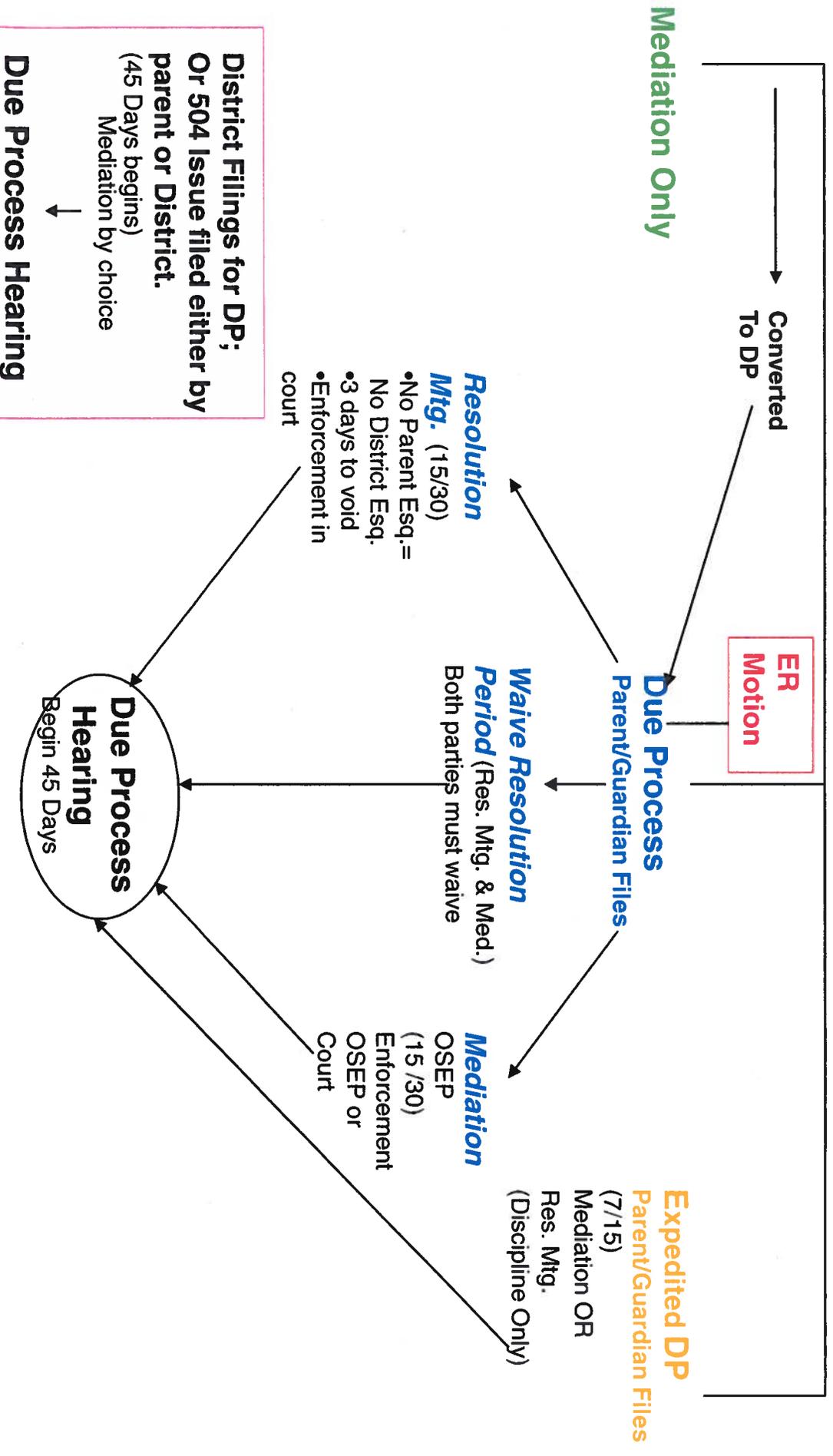
Dispute Resolution

□ Mediation

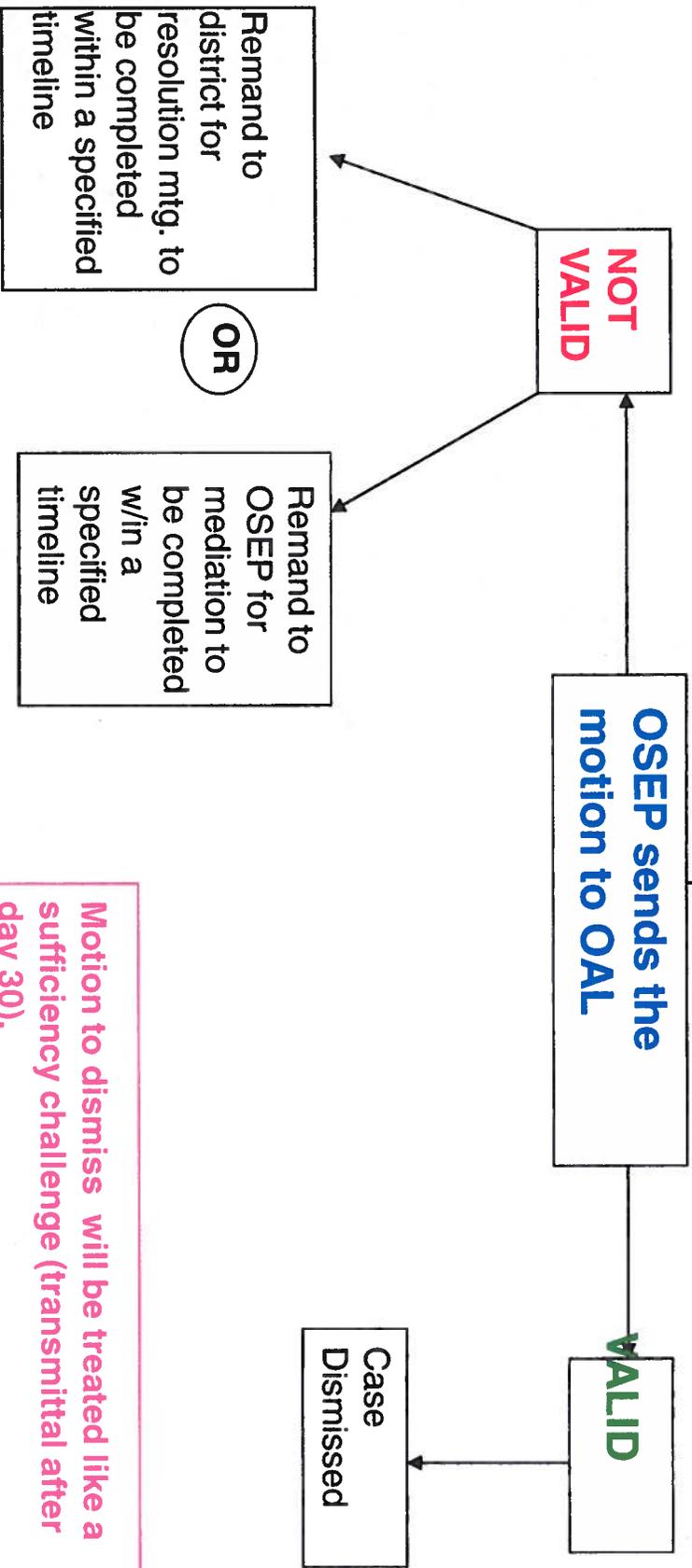
- In NJ mediation is available for students age three through 21. If the student is 18 or older, he/she must submit the petition unless his/her parent has obtained legal guardianship or the student states in writing that the parent can act on his/her behalf.
- Mediation is voluntary.
- Scheduled by the OSE at a time and location that is reasonably convenient to the parties.
- In NJ, parents can request mediation without also filing for due process. This is a request for “mediation only.”
- Agreements are enforceable.
- Either party may be accompanied by an attorney or advocate. [2.7(h)8]

DISPUTE RESOLUTION

Under IDEA 2004



**District Requests Dismissal
Parent Will NOT Attend Resolution
Session**



**Motion to dismiss will be treated like a sufficiency challenge (transmittal after day 30).
OAL will fax decision to OSEP.**

Parent Requests Intervention to Start 45 Day Clock- district will not engage in resolution activities

OSEP sends the motion to OAL

VALID

Case Transmitted

NOT VALID

OR

Remand to district for resolution mtg. to be completed w/in a specified timeline

Remand to OSEP for mediation to be completed w/in a specified timeline

Motion for Intervention will be treated like a sufficiency challenge.
OAL will fax decision to OSEP.
If resolution or mediation does not occur the case is transmitted to OAL.
If the case is transmitted, the 45-day timeline begins on the first day of the due process hearing.

Subchapter 9. Monitoring, Corrective Action and Complaint Investigation

□ Complaint Investigation

- An organization or individual may file a formal complaint with the OSE. [9.2(b)]
- The complaint must include an allegation that there was a violation of law or code. Typically, the complainant asserts that services are not being provided in accordance with the IEP, that discipline procedures were not followed, or the district failed to meet notice requirements.
- Model form is available in the Parental Rights in Special Education Handbook.

Subchapter 9. Monitoring, Corrective Action and Complaint Investigation

- What must a complaint include?
 - A statement that the education agency has violated the requirements of state/federal statute and/or regulation for the provision of special education and related services.
 - The facts on which the statement is based; and
 - The time period when the alleged violation occurred. The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received. [9.2]

Subchapter 9. Monitoring, Corrective Action and Complaint Investigation

- State Complaint Procedures
 - A copy of the complaint must be sent to the school district. [9.2(b)]
 - The district is given ten days to attempt to resolve the complaint directly with the complainant or the parties may agree to mediation of the complaint issues. [9.2(c)4]
 - If the complaint is not resolved through early resolution an investigation will take place.
 - May include a review of district policies;
 - Observation of programs;
 - Interviews; and
 - An on-site investigation, if determined necessary. [9.2(c)2]

Subchapter 9. Monitoring, Corrective Action and Complaint Investigation

- **Complaint Investigation Report**
 - Must be issued 60 days from the receipt of the written signed complaint, unless an extension of the timeline has been obtained. [9.2(e)]
 - The report will contain:
 - Factual findings;
 - Conclusions; and
 - A corrective action, as deemed necessary.
 - If the report contains a corrective action, it is the responsibility of the school district to complete the required elements according to the dates assigned. [9.2(g)]

Section 504 of the Rehabilitation Act of 1973

□ Dispute Resolution

- Parents may file for mediation and/or a due process hearing with the OSE for issues regarding 504 plans.

- Parents may file complaints with the Office for Civil Rights at
 - New York Office
 - Office for Civil Rights
 - U.S. Department of Education
 - 32 Old Slip, 26th Floor
 - New York, NY 10005-2500
 - 646-428-3900

What's Next?

- A1365 established a task force to study various issues related to improving special education programs and services for public school students.
- Will be reviewing:
 - The evaluation of practices for classifying and educating students who are eligible for special education programs and services;
 - Best practices for special education;
 - Strategies to reduce costs associated with out-of-district placements; and
 - Standards to ensure programs meet students' needs and focus on achievement.