

Executive Order No. 103 Notices

Education

State Board of Education

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103 (2020)

COVID-19 State of Emergency

Special Education

N.J.A.C. 6A:14-1.1, 3.9, and 5.2

Authorized: April 1, 2020, by the State Board of Education, Lamont O. Repollet, ED.D., Secretary, and Commissioner, Department of Education.

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; and Executive Order No. 103 (2020).

Effective Date: April 1, 2020.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

This is an emergency adoption of a temporary modification of rules governing the provision of special education and related services to students with disabilities pursuant to N.J.A.C. 6A:14-1.1 and N.J.A.C. 6A:14-3.9. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the State Board of Education and Department of Education is modifying its rules as follows:

Currently, Department regulations do not permit school districts or other educational agencies to deliver related services to students with disabilities through the use of telehealth and telemedicine, electronic communications, virtual, remote or other online platforms. Without access to increased flexibility in service delivery mechanisms, students with disabilities will not receive the special education and related services to which they are entitled to under the individualized education program (IEP) for each of them. During an extended public health-related school closure, district boards of education; charter schools; renaissance schools; the State agency or other public education agency that acts as the school district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program, and the provision of a free appropriate public education to students with disabilities; receiving schools defined by N.J.A.C. 6A:14-7.1(a); and Department-approved clinics and agencies as defined by N.J.A.C. 6A:14-5.2 shall ensure students with disabilities are provided the same educational opportunities provided to their nondisabled peers through electronic communications, virtual, remote, or other online platforms, as appropriate.

The opportunities provided to a student with disabilities shall be consistent with the student's IEP to the greatest extent possible. Further, during an extended public health-related school closure, related services, such as physical therapy, occupational therapy, speech and counseling may be provided to students with disabilities through electronic communications, virtual, remote, or other online platforms, as appropriate and as required by the student's IEP to the greatest extent possible.

Allowing the use of electronic communications, virtual, remote, or other online platforms enhances the ability of school districts to ensure that students with disabilities are provided the services they are entitled to, as set forth by a student's individualized education program (IEP),

during extended school closures. Modifying the rules governing the delivery of special education and related services to students with disabilities to allow for the services to be provided through electronic communications, remote, virtual, or other online platforms ensures school districts and educational agencies are capable of meeting their legal obligation to provide a free and appropriate public education, as required by the Individuals with Disabilities Education Act (IDEA), during a period of extended school closures to the greatest extent possible.

Full text of the modified rule text follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Subchapter 1. General Provisions

6A:14-1.1 General requirements

(a)-(c) (No change.)

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. – 2. (No change.)

3. Be located in facilities that are accessible to the disabled; [and]

4. Meet all requirements of this chapter[.]; **and**

5. Be provided through electronic communications, virtual, or other online platforms as appropriate and as required by a student’s individualized education program (IEP), during an extended public-health related school closure.

Subchapter 3. Services

6A:14-3.9 Related services

- (a) Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. **During an extended public-health related school closure, related services may be provided through telemedicine and telehealth or through electronic communications, which include virtual, remote, or other online platforms, as appropriate and as required by the student's IEP to the greatest extent possible.** Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1.-12. (No change.)

- (b) (No change.)

Subchapter 5. Providing Educational and Related Services

6A:14-5.2 Approval procedures for clinics or agencies

- (a) – (e) (No change.)
- (f) **During an extended public-health related school closure, an approved clinic or agency may provide related services to students with disabilities through the use of electronic communications, virtual, remote, or other online platforms, as appropriate, and as required by the student's IEP to the greatest extent possible.**