

## **Notice of Proposal for N.J.A.C. 6A:14, Special Education**

The following is the accessible version of the notice of proposal for N.J.A.C. 6A:14. The notice of proposal document includes two sections – [summary](#) and [proposed amendments](#).

## **Education**

### **State Board of Education**

### **Special Education**

### **Definitions**

### **Related Services**

### **General Requirements**

### **Proposed Amendments: N.J.A.C. 6A:14-1.3, 3.9, and 5.1**

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education and Acting Secretary, New Jersey State Board of Education.

Authority: N.J.S.A. 18A:4-15, 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:7F-1 et seq., 18A:39-1.1, 18A:40-6 through 12.4, 18A:46-1 et seq., and 18A:46A-1 et seq.; 20 U.S.C. §§ 1400 et seq., and 29 U.S.C. § 794; P.L. 108-446; and 34 CFR Part 300.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-112.

Submit written comments by January 5, 2024, to:

Kathleen Ehling, Assistant Commissioner

Division of Educational Services

New Jersey Department of Education

PO Box 500

Trenton, New Jersey 08625-0500

Email: [chapter14@doe.nj.gov](mailto:chapter14@doe.nj.gov)

The agency proposal follows:

### **Summary**

The Department of Education (Department) proposes to amend N.J.A.C. 6A:14, Special Education. The Department proposes to amend N.J.A.C. 6A:14-1.3, which sets forth definitions

regarding terms used in the chapter. The Department also proposes to amend N.J.A.C. 6A:14-3.9 and 5.1, which both set forth rules regarding the provision of related services to students with disabilities.

The following is a summary of the proposed amendments.

## **Subchapter 1. General Provisions**

### **N.J.A.C. 6A:14-1.3 Definitions**

This section provides definitions for terms used throughout N.J.A.C. 6A:14.

The Department proposes an amendment at N.J.A.C. 6A:14-1.3 to add a definition for “virtual instruction” to mean as that term is defined pursuant to N.J.A.C. 6A:32-2.1. The proposed amendment will clarify that virtual instruction is active instruction when the student and instructor are in different locations and the instruction is facilitated through internet and computer technologies due to closure of educational facilities.

## **Subchapter 3. Services**

### **N.J.A.C. 6A:14-3.9 Related Services**

This section describes the related services that may be provided to a student with a disability as part of an individualized education program (IEP). This section also sets forth the required staff certifications for personnel providing the services, where appropriate.

The Department proposes an amendment at N.J.A.C. 6A:14-3.9(a)4, which allows occupational therapy and physical therapy to be provided by therapy assistants pursuant to the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules. The Department proposes to clarify that physical therapy may be provided by physical therapy assistants pursuant to the “supervision” of a certified physical therapist.

The Department proposes new N.J.A.C. 6A:14-3.9(c) to allow for the provision of related services through virtual instruction, as appropriate, and as required by the student’s IEP. The

proposed rule also sets forth the following conditions for when the related services can be provided in accordance with the subsection: a student with a disability is unable to attend school due to a temporary or chronic medical condition, a school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c, and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13, or the student requires a mandatory period of isolation/quarantine for at least five days because the student has contracted a communicable disease or has been exposed to a communicable disease.

The proposed amendments will provide flexibility for school districts to provide related services virtually when a student is unable to attend school in-person. This flexibility will ensure continuity of services to students with disabilities, prevent regression of skills during the period of home instruction, and allow the student to make progress on the goals and objectives in the student's IEP.

## **Subchapter 5. Providing Education and Related Services**

### **N.J.A.C. 6A:14-5.1 General Requirements**

This section sets forth the general requirements district boards of education must follow when employing, or contracting for, child study teams and when providing educational services to students with disabilities.

The Department proposes an amendment at N.J.A.C. 6A:14-5.1(c)1iii(2), which requires physical therapy services provided pursuant to a contract between a school district or approved private school for students with disabilities and a clinic or agency to be provided by physical therapy assistants who work in the presence and pursuant to the supervision of a certified physical therapist. The Department proposes to require the work to be only pursuant to the supervision of a certified physical therapist (rather than presence and supervision) for consistency with the amendments proposed at N.J.A.C. 6A:14-3.9(a)4.

The proposed amendment will ensure that there is no impact on the provision of physical therapy services where a physical therapist is not on-site, while ensuring that a licensed physical therapist still assesses the student, writes the physical therapy goals and objectives, and directs the work of the physical therapist assistant.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments apply to the provision of special education programs and services to students with disabilities in the State. The proposed amendments set forth the responsibilities of district boards of education regarding the delivery of related services to students with disabilities. The proposed amendments enhance learning opportunities for students with disabilities through guaranteed procedural protections and provide a positive social impact for students with disabilities. The proposed amendments will have no additional social impact as they are designed to update the rules and processes concerning the delivery of special education related services to students with disabilities.

### **Economic Impact**

Special education is funded through a combination of Federal, State, and local funds. Local funds are raised by district boards of education through property taxes to pay for the education of nondisabled and disabled students. Eligible school districts receive State aid that may be utilized for the education of all students, including students with disabilities. School districts also receive State aid for special education, in addition to the Federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., Part B, and Federal and State preschool monies. Expenditure of these funds is governed by the IDEA and its implementing regulations, as well as, State law.

The Department does not anticipate that the proposed amendments will create additional expenses for district boards of education. Moreover, the Department does not anticipate the proposed amendments will create additional costs for school leaders or individual educators. The proposed amendments do not change the responsibilities of district boards of education and school leaders in ensuring the provision of related services to students with disabilities. Finally, the Department does not anticipate that the proposed amendments will have an additional economic impact on the Department or other State agencies.

### **Federal Standards Statement**

The proposed amendments are in compliance with the Federal requirements pursuant to the IDEA, 20 U.S.C. §§ 1400 et seq., and its implementing regulations, and will continue to advance the mission to ensure the provision of special education services to students with disabilities. The proposed amendments will ensure the chapter remains consistent with Federal regulations at 34 CFR 300.

### **Jobs Impact**

The Department does not anticipate the proposed amendments will result in the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry in New Jersey because the proposed amendments concern the provision of related services to students with disabilities.

### **Regulatory Flexibility Analysis**

The proposed amendments impact district boards of education, approved private schools for students with disabilities (APSSDs), and clinics and agencies. APSSDs and clinics and agencies could be considered small businesses as that term is defined by the Regulatory

Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not pose any additional reporting, recordkeeping, or other compliance requirements on APSSDs or clinics and agencies.

### **Housing Affordability Impact Analysis**

The proposed amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the proposed amendments will evoke a change in the average costs associated with housing because the proposed amendments concern the provision of related services to students with disabilities.

### **Smart Growth Development Impact Analysis**

The proposed amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern the provision of related services to students with disabilities.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

There is an extreme unlikelihood the proposed amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern the provision of related services to students with disabilities. Accordingly, no further analysis is required.

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

#### Subchapter 1. General Provisions

##### 6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§ 1400

et seq.) and its implementing regulations at 34 CFR Part 300, which terms are incorporated by reference herein.

...

**“Virtual instruction” means the same as that term is defined pursuant to N.J.A.C. 6A:32-2.1.**

...

### 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. 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 - 3. (No change.)

4. Occupational therapy and physical therapy may be provided by therapy assistants under the [direction] **supervision** of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.

i. – ii. (No change.)

5. - 12. (No change.)

(b) (No change.)

**(c) Related services required by the student’s IEP may be provided through virtual instruction, as appropriate, and pursuant to the following conditions:**

**1. The student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in the student’s usual educational setting, pursuant to N.J.A.C. 6A:16-10.**



**i. To request virtual related services due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written order from the student's physician verifying the projected need for confinement at the student's residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.**

**ii. The school district shall forward the written determination to the school physician, who shall verify the student's need for virtual related services. The school physician may contact the student's physician to secure additional information concerning the student's diagnosis or need for treatment and shall either verify the need for virtual related services or shall provide to the district board of education the reason(s) for denial.**

**iii. The school district shall notify the parent concerning the school physician's verification or reason(s) for denial within five school days after the school district's receipt of the written determination by the student's physician.**

**iv. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person. The school district shall provide the student with virtual related services within five school days after the school district's receipt of the school physician's verification or, if verification is made prior to the student's confinement, during the first week of the student's confinement to the home or another out-of-school setting.**

**v. The school district shall be responsible for the costs of providing virtual related services, either directly or through a contract with another district board of education, educational services commission, jointure commission, or approved clinic or agency. The costs shall include the cost of any needed equipment.**

**vi. When the provision of home or out-of-school instruction exceeds 30 consecutive days in a school year, the IEP team shall convene a meeting to review the continued need for virtual-related services and, if appropriate, revise the student's IEP.**

**2. A school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13; or**

**3. The appropriate local health agency or officer or the student's physician determines that the student requires a mandatory period of isolation/quarantine for at least five days because the student's presence in school may jeopardize the health of others because the student has contracted a communicable disease or has been exposed to a communicable disease.**

**i. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.**

#### Subchapter 5. Providing Educational and Related Services

##### 6A:14-5.1 General requirements

(a) – (b) (No change.)

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the

Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline [under] **pursuant to** which they are providing services, provide services [under] **pursuant to** this subsection if certified through the emergency certification process.

1. For public school students:

i. - ii. (No change.)

iii. Related services;

(1) (No change.)

(2) Physical therapy assistants shall work [in the presence and] under the supervision of a certified physical therapist.

(3) (No change.)

iv. - v. (No change.)

2. (No change.)

(d)-(e) (No change.)