

## **Proposed Amendments at N.J.A.C. 6A:14, Special Education**

The following is the accessible version of the proposed amendments at N.J.A.C. 6A:14. The second discussion level document includes three sections – [a comment and response form](#), [a summary of the proposed amendments](#) and [the rule text of the proposed amendments](#).

**State Board of Education  
Administrative Code  
Comment/Response Form**

This comment and response form contains comments from the May 3, 2023, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

**Topic:** Special Education                      **Meeting Date:** June 7, 2023  
**Code Citation:** N.J.A.C. 6A:14-3.9 and 5.1                      **Level:** Second Discussion  
**Division:** Educational Services                      **Completed by:** Office of Special Education

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from State Board of Education members and members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

- A. Kathy Goldenberg, President  
New Jersey State Board of Education
- B. Mary Beth Berry, Member  
New Jersey State Board of Education

1. **Comment:** The commenter asked whether the physical therapist would be physically meeting with the student for the assessment and development of a treatment plan rather than through telecommunication. **(B)**  
**Response:** The licensed physical therapist is required to conduct the assessment of the student requiring physical therapy services and develop the treatment plan. N.J.A.C. 6A:14-3.4 does not allow the assessment to be conducted virtually.
2. **Comment:** The commenter asked whether N.J.A.C. 6A:14-3.9(a)4 and 5.1(c)1iii(2) should state that the assessment must be conducted in-person. **(B)**  
**Response:** The regulations governing evaluations for special education and related services at N.J.A.C. 6A:14-3.4 do not state that assessments must be conducted in-person; therefore, additional language is not necessary at N.J.A.C. 6A:14-3.9(a)4 or 5.1(c)1iii(2).
3. **Comment:** The commenter described a scenario where the local educational agency (LEA) is having difficulty locating a related service provider to visit a student's home, but the student's parents want the services in-person. The commenter asked how the Department could ensure that the proposed amendment at N.J.A.C. 6A:14-3.9(c) will not increase difficulties for families or lead to increases in special education due process filings. **(B)**  
**Response:** The intent of the proposed amendment at N.J.A.C. 6A:14-3.9(c) is to provide greater flexibility to LEAs and families with respect to the provision of related services. There is currently a shortage of related service providers. The proposed amendment at N.J.A.C. 6A:14-3.9(c) would allow for the delivery of services outside of school hours and in the evening. The Department has received feedback from parents that virtual services can increase collaboration because parents can be engaged and/or observe the services if the services are provided in the evening hours. If there is a disagreement and a parent indicates that it would be more beneficial for the student to receive services in-

person in the home, and the school district is unable to secure a provider for in-person services in the home, the parents may pursue the dispute resolution options available through N.J.A.C. 6A:14, including mediation, due process, and complaint investigation.

4. **Comment:** The commenter asked whether the Department keeps records on dispute resolution filings. **(B)**  
**Response:** Yes, the Department keeps a record of all requests for mediation, due process hearings, and complaint investigations.
5. **Comment:** The commenter asked whether the data collected regarding requests for mediation, due process hearings, and complaint investigations would indicate if a school district does not have sufficient staff to provide a particular service. **(A)**  
**Response:** Yes, data obtained by the OSE through reporting, monitoring, complaints, and due process would indicate if a dispute involved the absence of sufficient staff.
6. **Comment:** The commenter asked who oversees the compliance or supervises the provision of services if they are being provided at night or on the weekend. **(B)**  
**Response:** The school district's child study team (CST) is responsible for overseeing the provision of virtual related services. The CST would be required to track the provision of virtual related services in the same manner that they track the provision of any other related services. Providers are required to keep logs of services that are submitted to the school district for verification of compliance with the student's individual education program (IEP).
7. **Comment:** The commenter asked whether an unintended consequence of the increased flexibility would be LEAs saving money by not considering the student's best interest. **(A)**  
**Response:** The Department recognizes the commenter's concern and notes that this is why the proposed amendment at N.J.A.C. 6A:14-3.9(c) will cover two very limited circumstances. Not every related service can be provided virtually. The proposed amendment at N.J.A.C. 6A:14-3.9(c)1 will allow virtual services for students who are already not in school due to a temporary or chronic health condition. N.J.A.C. 6A:16-10.1 currently allows the students with a temporary or chronic health condition to receive home instruction virtually; therefore, the proposed amendment will close the gap so the students can receive related services virtually, if required. Additionally, the proposed amendment at N.J.A.C. 6A:14-3.9(c)2 and 3 would allow the provision of virtual related services where the school district or school building is closed.
8. **Comment:** The commenter asked whether the Department had received feedback from the education field, such as the Statewide Parent Advocacy Network (SPAN) or other parent advocacy groups. **(B)**  
**Response:** The Department discussed this proposal with the New Jersey State Special Education Advisory Council (SSEAC), a group that is required by the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §300.169, and comprised of persons representing both providers and receivers of educational services for students with disabilities. One of the SSEAC's duties is to comment on any rules or regulations proposed by the State regarding the education of children with disabilities. (See 34 C.F.R. §300.169(b).) The feedback from the SSEAC regarding the proposed amendments has been positive. The Department also welcomes comments regarding the proposal throughout the rulemaking process.
9. **Comment:** The commenter asked whether the proposal has been reviewed by the SSEAC. **(A)**  
**Response:** Yes, the feedback from the SSEAC regarding the proposed amendments has been positive.



State of New Jersey  
DEPARTMENT OF EDUCATION  
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Second Discussion Level  
June 7, 2023

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.  
Acting Commissioner

To: Members, State Board of Education  
From: Angelica Allen-McMillan, Ed.D.  
Acting Commissioner  
Subject: N.J.A.C. 6A:14, Special Education  
Reason for Action: Amendments  
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:40-4, 18A:46-1 et seq., and 18A:46A-1 et seq.; and U.S.  
P.L. 93-112, § 504; 94-142; 99-457; 101-476; 105-17; and 108-446  
Sunset Date: September 10, 2027

**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:14-3.9 and 5.1, which both contain rules regarding the provision of related services to students with disabilities.

The following is a summary of the proposed amendments.

**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 under 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 under 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 telemedicine or telehealth, or through electronic communications, which include virtual, remote, or other online platforms, as appropriate and as required by the student’s IEP. The proposed regulation 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 Educational 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 under 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 under the supervision of a certified physical therapist. The Department proposes to require the work to be only under the supervision of a certified physical therapist 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.

### **Social Impact**

The rules proposed for amendment apply to the provision of special education programs and services to students with disabilities in the State. The rules proposed for amendment set forth the responsibilities of district boards of education regarding the delivery of related services to students with disabilities. The rules proposed for amendment 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 students both with and without a disability. 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 rules proposed for amendment are in compliance with Federal requirements under 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 300.300. Therefore, no additional federal standards analysis is required.

### **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, 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, under 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.

**Full text** of the proposed amendments follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]).

## Chapter 14. Special Education

### 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. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers, or guidance counselors.
  2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
  3. Speech and language services may be provided as a related service to a student who is classified as “eligible for special education and related services.”  
Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.
  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. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.



- ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.
  5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.
  6. Recreation shall be provided by certified school personnel.
  7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.
  8. Nursing services shall be provided as a related service 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 student's IEP.
  9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.
  10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.
  11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.
  12. Other related services shall be provided as specified in the student's IEP.
- (b) School personnel may give advice to parents regarding additional services that are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.
- (c) **Related services required by the student's IEP may be provided through telemedicine or telehealth, or through electronic communications, which include virtual, remote, or other online platforms, 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 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 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 determine 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.**

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

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

- (a) Each district board of education, independently or through joint agreements, shall employ or contract with child study teams, as set forth at N.J.A.C. 6A:14-3.1(b), speech-language specialists, and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

1. Joint agreements for child study team services may be entered into with local education agencies, including other district boards of education, educational services commissions, jointure commissions, and county special services school districts.
  2. A district board of education may supplement child study team services with additional teams through contracts or joint agreements.
  3. If a vacancy occurs on a child study team because of an absence of a member(s) of the team for an identified period of time, the district board of education may contract, for the duration of any such vacancy, with a clinic or agency approved by the Department of Education, an individual, or another district board of education for the services provided by the absent team member(s).
- (b) When a district board of education provides its educational program through another New Jersey district board of education, responsibility for this chapter's requirements shall be according to the following:
1. In a sending-receiving relationship pursuant to N.J.S.A. 18A:38-1 et seq., when all the students of one or more grades of a district board of education attend a school(s) operated by another district board(s) of education, the receiving district board of education shall be responsible for determining the eligibility of the sending district board of education's students and developing and implementing their IEPs.
  2. When individual students are placed by a district board of education in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services, and child study team services to students with disabilities.
- (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 which they are providing services, provide services under this subsection if certified through the emergency certification process.

1. For public school students:
  - i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5;
  - ii. Child study team services to supplement existing district board of education services;
  - iii. Related services;
    - (1) Certified occupational therapy assistants, and others employed in a supportive role to licensed and, where applicable, certified providers of related services, shall work under the supervision of an appropriately licensed and, where applicable, certified provider of such services.
    - (2) Physical therapy assistants shall work [in the presence and] under the supervision of a certified physical therapist.



3. District boards of education are not required to provide prior notice to the Department of Education when contracting for an independent child study team evaluation in accordance with N.J.A.C. 6A:14-2.5.
- (e) District boards of education may contract for medical diagnostic services with medical clinics and agencies approved by another New Jersey State agency or appropriate state agencies outside of New Jersey.