

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 proposal 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 June 7, 2023, meeting of the State Board of Education when the rulemaking was considered at Second Discussion Level.

Topic:	Special Education	Meeting Date:	October 4, 2023
Code Citation:	N.J.A.C. 6A:14-3.9 and 5.1	Level:	Proposal
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:

1. Sue Goldman, VOICES Editorial Board Liaison, and Robynne Kratchman, Past President and Legislative Chair, New Jersey Speech-Language-Hearing Association (NJSHA)
2. Elizabeth Athos, Esq., Senior Attorney, Education Law Center (ELC)
3. Michael Pearson, Director of Children’s Advocacy, The ARC of New Jersey
4. Peg Kinsell, Policy Director, Statewide Parent Advocacy Network (SPAN)
5. Marcella Simadiris
6. Elizabeth Yucis, Associate Director, Professional Development and Instructional Issues, New Jersey Education Association
7. Rebecca K. Spar, Esq., on behalf of New Jersey Special Education Practitioners

1. Comment: The commenter expressed concern regarding the cross-reference to N.J.A.C. 6A:32-13 at proposed new N.J.A.C. 6A:14-3.9(c)2. The commenter stated that N.J.A.C. 6A:32-13 permits a program of remote instruction that allows the use of asynchronous instruction (instruction that does not occur in real time). The commenter also stated that asynchronous instruction would not satisfy the Individuals with Disabilities Education Act (IDEA) requirements, is particularly inappropriate for therapeutic services, and does not meet the requirements for Medicaid reimbursement for eligible students. **(1)**

Response: The Department disagrees. While N.J.A.C. 6A:32-13(c)3i(1) permits asynchronous virtual or remote instruction, N.J.A.C. 6A:32-13(b)1ii provides for related services for students with disabilities “to be provided through the use of electronic communication or a virtual or online platform, as appropriate.” [Guidance from the United States Department of Education, Office of Special Education Programs](#) permits and supports the provision of special education and related services through virtual platforms. The IEP team, of which the parent is a member, is responsible for determining how related services will be provided. Proposed N.J.A.C. 6A:14-3.9(c) addresses only the ability to provide related services virtually under certain conditions and does not address the reimbursement of services through Medicaid reimbursement of services through Medicaid.

- 2. Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) should include safeguards and/or criteria to ensure that speech-language pathology (SLP) services appropriately deliver services remotely. **(1)**

Response: The Department declines to make the suggested change regarding the delivery of SLPs services because it would be overly prescriptive in relation to one service. Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances and proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. An appropriately configured IEP team, of which the parent is a member, is responsible for determining whether related services will be provided in-person or remotely. The local educational agency (LEA) is responsible for ensuring that the full implementation of a student’s IEP as required at N.J.A.C. 6A:14-4.1(a) is not reduced or removed based on whether services are provided remotely or in-person. The Department will consider issuing guidance addressing LEA obligations regarding the provision of virtual related services, including SLPs.
- 3. Comment:** The commenter stated that amending N.J.A.C. 6A:14-3.9(a)4 to state that physical therapist assistants must work “in the presence and under the supervision of” a certified physical therapist would ensure consistency between N.J.A.C. 6A:14-3.9(a)4 and 5.1(c)1iii. **(2)**

Response: The Department declines to adopt the suggested change because it would decrease flexibility with respect to the provision of physical therapy services for students with disabilities. Additionally, the suggested change would not be consistent with N.J.A.C. 13:39A, which governs the practice of licensed physical therapists and physical therapy assistants.
- 4. Comment:** The commenter stated that the Department has failed to provide a reasoned analysis to justify the repeal of the existing requirement at N.J.A.C. 6A:14-5.1(c)1iii that on-site supervision is required for physical therapy. **(2)**

Response: The Department disagrees. The Department’s stated rationale for the proposed amendment at N.J.A.C. 6A:14-5.1(c)1iii includes consistency within N.J.A.C. 6A:14 and with N.J.A.C. 13:39A, as well as flexibility for the provision of physical therapy services when a certified physical therapist cannot be present on-site. By allowing off-site supervision, which is authorized pursuant to N.J.A.C. 13:39A, a student requiring physical therapy services will still be able to receive services in the absence of a certified physical therapist.
- 5. Comment:** The commenter expressed concern that the State Board lacks statutory authority to implement the proposed amendments at N.J.A.C. 6A:14-3.9(c)1 and 3 because the New Jersey Legislature has authorized virtual instruction only for school closures. **(2)**

Response: The Department disagrees. The Department has cited the relevant statutory authorities within the introduction to these amendments, which include both State and Federal law. Also, rulemaking, such as the proposed amendments at N.J.A.C. 6A:14-3.9, can be initiated to implement the following: 1) a statute, including a new law; 2) a change in agency or governmental policy; 3) an executive order issued by the Governor; 4) a court decision; 5) a rulemaking petition from an interested party; 6) an emergent danger or peril; or 7) a Federal requirement. As a policy matter, the Department has previously recognized the benefits of virtual services for students with disabilities in certain circumstances. This was codified at N.J.A.C. 6A:16-10.1, which permits home or out-of-school instruction, including online services, for both general and special education students in limited situations.

6. **Comment:** The commenter indicated that proposed N.J.A.C. 6A:14-3.9(c) requires significant amendments, including language that in-person related services are the first choice for students with disabilities, a clear definition of the acceptable means of providing virtual related services, standards/factors for ensuring that virtual services are acceptable for a student, and a statement that paper packets or asynchronous instruction would not be acceptable as a means of implementing virtual related services. (2)

Response: [Guidance from the United States Department of Education, Office of Special Education Programs](#) permits and supports the provision of special education and related services through virtual platforms. An appropriately configured IEP team, of which the parent is a member, is responsible for determining how special education and related services will be provided to a student with a disability and documenting those decisions in the IEP. The Department proposes to amend proposed N.J.A.C. 6A:14-3.9(c)1iv to add that an IEP team shall meet to determine whether the related service will be provided virtually or in-person. The additional amendment proposed at N.J.A.C. 6A:14-3.9(c)1iv is as follows:

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 out-of-school setting.

The Department also proposes new N.J.A.C. 6A:14-3.9(c)3i to require the IEP team to meet to determine whether the related service will be provided virtually or in-person when the student requires a mandatory period of isolation/quarantine for at least five days, pursuant to N.J.A.C. 6A:14-3.9(c)3. Proposed new N.J.A.C. 6A:14-3.9(c)3i is as follows:

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.

7. **Comment:** The commenter indicated that proposed N.J.A.C. 6A:14-3.9(c) must state that a parent will not bear any of the cost needed to provide virtual related services. (2)

Response: The Department disagrees. Proposed N.J.A.C. 6A:14-3.9(c)1v states that the school district shall be responsible for the cost of providing virtual related services, including any necessary equipment. Similarly, N.J.A.C. 6A:14-1.1(d) requires a free, appropriate public education for all students with disabilities at no charge to the parent.

8. **Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) does not indicate that parents cannot be compelled to assist with the implementation of virtual related services. (2)

Response: The Department disagrees. Proposed N.J.A.C. 6A:14-3.9(c) provides the option of related services under certain limited circumstances. N.J.A.C. 6A:14-3.9(c) states that “[r]elated

services required by the student’s IEP may be provided,” which is a clear indicator that the provision of any related service virtually pursuant to N.J.A.C. 6A:14-3.9(c) is optional. The virtual related services are merely an option that parents can utilize.

9. **Comment:** The commenter requested that the Department amend proposed N.J.A.C. 6A:14-3.9(c) to clarify whether parents can request, at the beginning of the school year, telehealth for a student with significant needs who will require telehealth throughout the year. (3)

Response: The Department disagrees that the requested change is necessary because proposed N.J.A.C. 6A:14-3.9(c)1i will allow a parent to seek virtual related services under the scenario raised by the commenter.

10. **Comment:** The commenter stated that the language and definitions at proposed N.J.A.C. 6A:14-3.9(c) are not clear and that telehealth and telemedicine, as well as virtual and remote, mean different things. The commenter expressed concern that rather than being provided live related services, students would receive paper packets, written instruction, and no interaction with staff. (4)

Response: The Department agrees that the proposal needs to be further clarified and that the references to terms might be confusing as they are not defined elsewhere in the regulations. Therefore, the Department proposes to add a definition for “virtual instruction” at N.J.A.C. 6A:14-1.3 as follows:

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

Also, the Department proposes to amend proposed N.J.A.C. 6A:14-3.9(c) to delete telemedicine or telehealth, or through electronic communications” and “remote, or other online platforms.” The proposed amendments also will state that related services may be provided through “virtual instruction.” The term’s definition at N.J.A.C. 6A:32-2.1 does not include paper packets or other written instruction. Proposed N.J.A.C. 6A:14-3.9(c) will allow for the provision of related services virtually as appropriate and as required by the student’s IEP. The additional amendment proposed at N.J.A.C. 6A:14-3.9(c) is as follows:

(c) **Related services required by the student’s IEP may be provided through**

[[telemedicine or telehealth, or through electronic communications, which include

which include]] virtual [[, remote, or other online platforms]] * instruction *, as****

appropriate and pursuant to the following conditions:

An appropriately configured IEP team, of which the parent is a member, is responsible for determining the way virtual related services will be provided to a student with a disability.

11. **Comment:** The commenter stated that virtual related services do not afford enhanced learning opportunities for students with disabilities or provide a positive social impact because isolation greatly impacts the families with which the commenter’s organizations works. (4)

Response: The Department disagrees. The Department emphasizes the limited application of this proposed regulation and the fact that the delivery of virtual related services, as set forth at proposed N.J.A.C. 6A:14-3.9(c), will be for a temporary or chronic health condition, a temporary school closure or a quarantine. Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or

chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not the provision of related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services.

12. **Comment:** The commenter asked why proposed N.J.A.C. 6A:14-3.9(c)1i, ii, and iii require approval through a health professional if the IEP team develops an IEP for a student that provides for home instruction and the IEP team determines that related services may be delivered virtually. (4)

Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Approval by a health professional is required to confirm that that student is presenting an acute or chronic medical condition or quarantined and requires home instruction. In these instances, the student is only receiving instruction and related services at home temporarily due to an acute or chronic medical condition, school closure or quarantines. An appropriately configured IEP team, which includes the parent, will meet to determine if related services will be provided virtually or in-person. Should a student with a disability require home instruction for more than 30 consecutive school days, the IEP team is required to meet to determine if virtual related services continue to be necessary and, if appropriate, revise the IEP.

13. **Comment:** The commenter stated that the process for deciding on virtual or in-person related services at proposed N.J.A.C. 6A:14-3.9(c) needs further clarification, including factors such as the student's ability to participate in virtual services, availability of equipment, interruption to the student's family, and accountability measures. (4)

Response: The Department agrees. See the response to Comment 10 for the proposed change at Proposal Level. The factors noted by the commenter should be discussed and considered by the IEP team.

14. **Comment:** The commenter stated that it is arbitrary and capricious to provide virtual instruction under the circumstances set forth at proposed N.J.A.C. 6A:14-3.9(c), and questions why the proposed amendment does not include students out of school for disciplinary reasons. (2)

Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. It is not arbitrary and capricious for the Department to extend the allowance of virtual related services under these circumstances to close this gap and in circumstances when 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. N.J.A.C. 6A:14-2.8 addresses the provision of services when a student with a disability is removed from school for disciplinary action.

15. **Comment:** The commenter requested that the Department revise proposed N.J.A.C. 6A:14-3.9(c) to provide more clarity for specific situations, such as missing school for disciplinary reasons, informal removals, and awaiting psychological clearance, because related services help students with disabilities to build skills and prevent regression. **(3 and 4)**
Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not the provision of related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. The Department declines to include additional student circumstances, such as disciplinary removals, informal removals, or awaiting a psychological clearance at proposed N.J.A.C. 6A:14-3.9(c) because the proposed regulation addresses only students receiving home instruction for a temporary or chronic medical condition in accordance with N.J.A.C. 6A:16-10.1(a) when 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.
16. **Comment:** The commenter stated that the proposed amendments need to address imprisoned youths who have IEPs. The commenter also stated that incarcerated students are ignored by the system. The commenter also referenced materials regarding the Federal lawsuit *Adam X. et al. v. New Jersey Department of Corrections and Department of Education et al.* issued by the American Civil Liberties Union (ACLU) of New Jersey. **(5)**
Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not the provision of related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. The Department declines to specifically address incarcerated students at N.J.A.C. 6A:14-3.9(c). Proposed N.J.A.C. 6A:14-3.9(c) addresses students receiving home instruction for a temporary or chronic medical condition in accordance with N.J.A.C. 6A:16-10.1(a), when 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 policies implemented at the Juvenile Justice Commission and Department of Corrections address the provision of special education and related services when a student with disabilities is unable to attend school due to an acute or chronic medical condition, building closure or quarantine.
17. **Comment:** The commenter expressed concern that the proposed amendments at N.J.A.C. 6A:14 may lead to a slippery slope for providing related services to students with disabilities. **(6)**
Response: The Department disagrees as it is clear that the proposed amendments at N.J.A.C. 6A:14-3.9 and 5.1 will have limited effect. Proposed N.J.A.C. 6A:14-3.9(c) will allow virtual related services under one of three conditions: when a parent requests virtual related services because the student is confined to the home or another out-of-school setting due to a temporary

or chronic health condition, when a school building or school district is closed, or when the appropriate local health agency or officer or the student's physician determines that the student requires a mandatory period of isolation for at least five days to prevent the spread of communicable disease. There are no other instances in which students with disabilities can receive virtual related services pursuant to N.J.A.C. 6A:14-3.9(c).

- 18. Comment:** The commenter stated that the best way for a student to receive related services under N.J.A.C. 6A:14 is in their school building, with an appropriately certificated and licensed provider with whom the student and family have a trusting and caring relationship. The commenter also stated that, while circumstances may warrant virtual or remote related services, it should be ensured that school districts do everything possible to provide services to students in person during the school day. **(6)**

Response: The Department recognizes that the provision of in-person related services pursuant to N.J.A.C. 6A:14 is the best-case scenario for students with disabilities who require related services. However, the best-case scenario is not always an option and the parties must find an alternative. Proposed N.J.A.C. 6A:14-3.9(c) will provide parents with an option for their child to receive virtual related services if the student meets one or more of the conditions set forth in the regulation.

- 19. Comment:** The commenter requested that a definition for "chronic," as used at N.J.A.C. 6A:14-3.9(c)1, be added to delineate which students' medical conditions warrant virtual/remote related services. **(6)**

Response: The Department declines to add a definition for "chronic" because, pursuant to N.J.A.C. 6A:14-3.9(c)1, a medical doctor will have to render an opinion as to the child's condition and determine whether it warrants home instruction.

- 20. Comment:** The commenter asked for additional clarification on whether "a need for treatment that precludes participation in the student's usual educational setting," as proposed at N.J.A.C. 6A:14-3.9(c)1, covers students in inpatient behavioral health facilities or residential juvenile detention facilities who may be receiving behavioral treatment. The commenter also suggested adding "medical or behavioral health" before "treatment" at N.J.A.C. 6A:14-3.9(c)1. **(6)**

Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not the provision of related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. Regarding students with disabilities placed in an inpatient behavioral health facility, the facility is considered subject to the requirements of N.J.A.C. 6A:14. Students with disabilities in these residences would be covered by proposed N.J.A.C. 6A:14-3.9(c), with their IEP teams making decisions regarding the delivery of related services. Regarding residential juvenile detention facilities, the policies implemented at the Juvenile Justice Commission and Department of Corrections address the provision of special education and related services when a student with disabilities is unable to attend school due to an acute or chronic medical condition, building closure, or quarantine.

The Department declines to add "medical or behavioral health" before "treatment" because it is not necessary, as the language would be a superfluous addition to the regulation. A student is eligible for special education and related services because it has been determined

through assessments that the student has an existing disabling condition, which may include either medical or behavioral concerns, or both.

21. **Comment:** The commenter sought clarification on whether students who are suspended from school for disciplinary reasons will be eligible for these services, pursuant to proposed N.J.A.C. 6A:14-3.9(c)1, or if eligibility is strictly and explicitly limited to health conditions. **(6)**
Response: Proposed N.J.A.C. 6A:14-3.9(c) will not apply to students who are suspended from school for disciplinary reasons. The proposed regulation is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances, but not the provision of related services. Proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services.
22. **Comment:** The commenter sought clarification on how students experiencing homelessness, and their families, can receive remote or virtual related services in the case that a student is unable to attend school for the reasons specified at proposed N.J.A.C. 6A:14-3.9(c). The commenter stated that it is important to ensure that all eligible students can receive these services, regardless of whether they are currently experiencing homelessness. **(6)**
Response: A homeless student who suffers from chronic or temporary illness and is confined to an area for the course for the illness would be eligible to receive the related services, pursuant to proposed N.J.A.C. 6A:14-3.9(c).
23. **Comment:** The commenter requested that proposed N.J.A.C. 6A:14-3.9(c)1v be amended to require school districts to provide adequate professional development and planning time to staff who are delivering these services, as well as compensation for staff delivering the services outside of school hours, as well as any instructional materials required for the successful implementation of the related services. **(6)**
Response: The Department declines to amend proposed N.J.A.C. 6A:14-3.9(c)1v to make the suggested changes regarding professional development, planning time to staff who are delivering services, and the addition of instructional materials. Existing N.J.A.C. 6A:14-1.2(b)14 requires each district board of education to have policies, procedures, and programs in effect to ensure the professional development needs for professional and paraprofessional staff who provide special education or related services. Existing N.J.A.C. 6A:14-1.2(b)19 requires each school district to ensure a plan is in effect to establish stability in special education programming, which includes taking into account the consistency of the location, curriculum, and staffing in the provision of special education and related services. Additionally, N.J.A.C. 6A:14-4.1(a) requires each district board of education to provide educational programs and related services required by students' IEPs, including instructional materials required to implement the IEP.
24. **Comment:** The commenter requested a change to prohibit “simulcast” sessions and to specify that teachers cannot work remotely and in-person with students at the same time. The commenter also stated that speech therapy and certain counseling sessions are typically offered to groups of students. The commenter further stated that, after two years of hybrid instruction during the COVID-19 pandemic, it is clear that “simulcast” teaching is an incredibly challenging format in which no students, whether in-person or virtual, receive an optimal learning experience. The commenter also stated that the suggested change would ensure that students receive the best possible related services given their unique needs and circumstances. **(6)**

Response: The Department declines to make the suggested change. There may be times when simulcast sessions are necessary and the only way every student can receive school lessons at the same time. Furthermore, if a student’s IEP specifies group services and the only time the group can meet requires simulcast, then the simulcast must be used in accordance with the IEP.

25. **Comment:** The commenter stated that the use “remote” at proposed N.J.A.C. 6A:14-3.9(c)1 creates a conflict between the proposed regulation and N.J.S.A. 18A:7F-9 and N.J.A.C. 6A:32-13.1(b)1ii. The commenter indicated that N.J.S.A. 18A:7F-9.b and c state that related services may be delivered to students with disabilities through the use of electronic communication or a virtual or online platform. The commenter stated that, in implementing N.J.S.A. 18A:7F-9, N.J.A.C. 6A:32-13 allows virtual or remote instruction to be provided to students, the regulations do not state that related services can be provided through “remote” means. The commenter also indicated that N.J.A.C. 6A:32-13.1(b)1ii explicitly states that related services may only be delivered through the use of electronic communication, or a virtual or online platform, as appropriate. The commenter further stated that the term “remote” should be removed at proposed N.J.A.C. 6A:14-3.9(c)1 because “remote” is not synonymous with “virtual,” “online platform,” or “electronic communications.” (7)

Response: Please see the response to Comment 14.

26. **Comment:** The commenter expressed concern that proposed N.J.A.C. 6A:14-3.9(c) allows related services to be provided through telemedicine or telehealth, or through electronic communications, which include virtual, remote, or other online platforms, but the terms are not defined. The commenter stated that, without clear definitions, no one will know what are acceptable means of providing related services when the student and are in different locations. The commenter referenced the definitions of “telehealth” and “telemedicine” at N.J.S.A. 45:1-61, which governs the provision of other than in-person health services by professionals who provide related services, and recommended that proposed N.J.A.C. 6A:14-3.9(c) be amended to refer to N.J.S.A. 45:1-61 for the definitions for “telehealth” and telemedicine.” (7)

Response: Please see the response to Comment 14.

27. **Comment:** The commenter stated that Department recently defined “virtual instruction” and “remote instruction” at N.J.A.C. 6A:32-2.1 and 13, and that a review of the definitions and the Department’s responses to public comments indicates why remote related services should not be allowed under any circumstances. The commenter stated that, during the comment period for the regulations at N.J.A.C. 6A:32 pertaining to school closures pursuant to N.J.S.A. 18A:7F-9.b or c, the Department agreed that in-person services worked best for students in preschool through grade 12. The commenter also stated that, since related services can be provided in-person when a student is on home instruction due to a temporary or chronic health condition -- and the Department agrees that it is best for services be provided in person for students with disabilities - - proposed N.J.A.C. 6A:14-3.9(c) should clearly state that there are very few instances where other than in-person related services can be used for students with disabilities on home instruction due to a temporary or chronic health condition. (7)

Response: The Department disagrees that a change at proposed N.J.A.C. 6A:14-3.9(c) is necessary. The proposed regulation sets forth the three instances in which students with disabilities are able to use virtual related services, which are when a parent requests virtual related services because the student is confined to one location with a temporary or chronic medical condition, the school building is closed pursuant to N.J.S.A. 18A:7F-9, or 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 of a

communicable disease. Regarding what specific related services can be given through virtual instruction, the proposal is clear that it is to be determined by an appropriately configured IEP team, which includes the student's parent. Please see the response to Comment 14 regarding the deletion of the reference to remote platforms and other terms.

- 28. Comment:** The commenter stated that “electronic means” is not defined at N.J.A.C. 6A:14 or 6A:32, but the term commonly includes any form of communication that is broadcast, transmitted, stored or viewed using electronic media, such as computers, phones, email and video. The commenter also stated that proposed regulation references virtual and remote platforms but does not define them and “remote instruction,” as defined at N.J.A.C. 6A:32-2.1, eliminates facilitating distant instruction through the internet, computer technologies, or through all electronic means. The commenter further stated that this leaves much cause for confusion and suggests the alarming possibility that a school district could attempt to provide remote related services to students with disabilities by providing books, manuals, or paper packets.

Furthermore, the commenter expressed concern regarding the use of paper packets, stating that there is no known peer-reviewed research showing that paper packets are an effective means of providing related services to students with disabilities. The commenter stated that, while some school districts have used paper packets with limited teacher contact in providing instruction for who are incarcerated, courts have held that, even in those circumstances, providing special education and related services through paper packets with limited teacher contact violates students' rights under the IDEA. The commenter also stated that allowing “remote” related services, as defined by the Department, would violate the rights of students with disabilities and, therefore, “remote” should be eliminated at proposed N.J.A.C. 6A:14-3.9(c) as a means of providing related services when a student with disabilities is on home instruction pursuant to N.J.A.C. 6A:16-10.1. The commenter further stated that instruction can only be provided directly or through virtual or online services when a student with disabilities is confined to the home or another out-of-school setting, pursuant to N.J.A.C. 6A:16-10.1. The commenter also stated that “remote” related services are not an option if school facilities or school districts are closed pursuant to N.J.S.A. 18A:7F-9.b or c. The commenter further stated that there is no rational basis for allowing school districts to provide remote related services when a student is on home instruction due to a temporary or chronic health condition when school districts are prohibited from using remote means to provide instruction under the three conditions set forth at N.J.A.C. 6A:14-3.9(c). (7)

Response: The Department agrees that the proposal needs to be further clarified and that the references to terms might be confusing. The Department proposes to amend proposed N.J.A.C. 6A:14-3.9(c) to delete “remote instruction” as a method through which related services may be provided to students with disabilities. Please see the response to Comment 14 for the proposed amendments.

- 29. Comment:** The commenter stated that what the Department collectively refers to all the terms at proposed N.J.A.C. 6A:14-3.9(c) as “virtual services,” which, the commenter contended, is misleading and contrary to how the Department responded to comments regarding “virtual” and “remote instruction” at N.J.A.C. 6A:32-13.1. The commenter also stated that, at the time that the amendments at N.J.A.C. 6A:32-13.1 were being considered, the Department said that it was purposefully making a distinction between the definitions for “virtual instruction” and “remote instruction” and that school districts should begin to differentiate between the two modes of instruction. The commenter further stated that the one thing that the Department's proposed means of offering related services seems to have in common is that the student with disabilities

and the related service provider are in distant locations from one another; therefore, and the commenter suggested that the terms be collectively referred to as “distant related services.” (7) **Response:** The Department declines to make the commenter’s suggested change to “distant related services.” Please see the response to Comment 14 regarding the amendments related to the terms at proposed N.J.A.C. 6A:14-3.9(c).

30. **Comment:** The commenter stated that the Department claims in the Social Impact statement that 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, but does not include evidence that providing related services through distant means would result in enhanced learning opportunities compared to in-person related services. The commenter also stated that there will clearly be a negative social impact if distant related services are provided rather than in-person services. The commenter further stated that placing students with disabilities on home instruction has already removed them from social interaction with their peers. The commenter also stated that, pursuant to proposed N.J.A.C. 6A:14-3.9(c), a student with disabilities could also be removed from direct social interaction with the related service provider or any social interaction in the case of remote-related services. The commenter mentioned the COVID-19 pandemic as an example of the significant and negative social impact of providing distant related services. (7)

Response: The Department disagrees with the commenter’s statement. Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student with disabilities is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. With respect to N.J.A.C. 6A:14-3.9(c)1, the parent must request such services. Pursuant to proposed N.J.A.C. 6A:14-3.9(c)1 and 3, an appropriately configured IEP team, of which the parent is a member, is responsible for considering and determining the appropriateness of related services being provided in-person or virtually. Proposed N.J.A.C. 6A:14-3.9(c) simply provides flexibility for the IEP team to make the most appropriate decision based on the student’s individual needs.

31. **Comment:** The commenter stated that it will be unclear to parents, school districts, and providers as to which students with disabilities who have chronic health conditions and are on home instruction are covered by proposed N.J.A.C. 6A:14-3.9(c). The commenter also stated that the proposed regulation applies if a student with disabilities is confined to home or another out-of-school setting or a need for treatment that precludes participation in the student’s usual educational setting, pursuant to N.J.A.C. 6A:16-10. The commenter further stated that parents and school districts will know that the student with disabilities is on home instruction and has a temporary or chronic health condition, but they may not know, understand, or recall whether the student was placed on home instruction pursuant to N.J.A.C. 6A:16-10 or by the student’s IEP team. The commenter also stated that the IDEA requires each public agency to have a continuum of alternative placements available to meet the needs of students with disabilities and that home instruction is part of the continuum and is an option for placement when less restrictive options have been considered and determined inappropriate. The commenter further stated that students with disabilities who have chronic health conditions like chronic fatigue syndrome, temperate regulation issues, and immune compromised conditions would likely have been placed on home instruction by the IEP team and not pursuant to N.J.A.C. 6A:16-10.1.

The commenter stated that N.J.A.C. 6A:16-10.1 requires the IEP team to meet if the home instruction exceeds 30 consecutive days and, if appropriate, revise the student’s IEP. The

commenter also stated that although the student with disabilities may have initially requested home instruction pursuant to N.J.A.C. 6A:16-10.1, they are now on home instruction pursuant to an IEP team decision pursuant to the IDEA. The commenter asked if the Department intends that proposed N.J.A.C. 6A:14-3.9(c) will cover students with disabilities who have chronic health conditions and whose IEPs provide for home instruction but, at some time in the past, may have sought home instruction pursuant to N.J.A.C. 6A:16-10. (7)

Response: If a student with disabilities begins home instruction pursuant to N.J.A.C. 6A:16-10 and it exceeds 30 days, the student will continue to receive the same instruction and related services as when the home instruction began. N.J.A.C. 6A:16-10 and proposed N.J.A.C. 6A:14-3.9(c) are mechanisms to ensure that a student with disabilities continues to benefit from instruction and related services if unable to leave the home. Proposed N.J.A.C. 6A:14-3.9(c) is meant to allow a temporary service under three specific instances, which are when a parent requests virtual related services because a student with disabilities is confined to one location with a temporary or chronic medical condition, the school building is closed pursuant to N.J.S.A. 18A:7F-9, or 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 of a communicable disease. Pursuant to proposed N.J.A.C. 6A:14-3.9(c)1, the related services can be continued beyond 30 days if determined appropriate by the IEP team.

32. **Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) does not contain any standards for providing related services through "virtual, remote, or other online platforms." The commenter also stated that, although the proposed regulation says that related services can only be provided through a distant means "as appropriate," it does not contain any standards or criteria for ensuring that distant related services would be appropriate for a particular student with disabilities. The commenter further stated that flexibility without standards or criteria for ensuring distant related services are equivalent to in-person services will harm students with disabilities and violate their rights under IDEA. The commenter contrasted proposed N.J.A.C. 6A:14-3.9(c) with the standards at N.J.S.A. 45:1-61 regarding when and how telemedicine or telehealth can be used, including requiring the same standard of care or practice when services are provided in-person or through telemedicine or telehealth. The commenter requested that "patient" be changed to "parent or adult student" and that the following standards at N.J.S.A. 45:1-61 be added at proposed N.J.A.C. 6A:14-3.9(c):

- A patient cannot be required to use telemedicine or telehealth;
- Asynchronous store-and-forward technology, with or without the use of interactive, real-time, two-way audio, can be used only if the provider determines that the same standard of care will be met as if the services were provided in-person and informs the patient of this determination at the onset;
- "Telemedicine cannot include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission."
- Contact information must be made available so the patient can contact the provider of services for at least 72 hours following the provision of services;
- All providers using telemedicine are subject to the same standard of care or practice standards as are applicable to in-person settings. This includes discussions with the patient as to risk and benefits of telemedicine versus in-person care. If the standard of care would not be consistent with in-person care, the provider needs to inform the patient and tell them to seek in-person care. (7)

Response: The Department disagrees that proposed N.J.A.C. 6A:14-3.9(c) should be amended to include requested standards or criteria. Each student with

disabilities has unique issues that may require different types of related services. Whether it is appropriate for these related services to be delivered virtually is a matter for an appropriately configured IEP team, of which the parent is a member, to decide, pursuant to proposed N.J.A.C. 6A:14-3.9(c)1 and 3. Please see the response to Comment 14 regarding the deletion of references to “telemedicine” and “telehealth” at N.J.A.C. 6A:14-3.9(c).

- 33. Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) begins by telling a parent how to request virtual related services when a student is confined to home or another out-of-school setting due to a temporary or chronic health condition, but the proposed regulation does not mention what parents should do if they want only in-person related services. The commenter questioned whether the parent would need to request in-person services or if in-person related services will be set up if the parent does nothing. The commenter stated that the proposed regulation must be explicit that, in either scenario, parents have a choice between in-person related services or a particular form of distant related services. (7)

Response: Proposed N.J.A.C. 6A:14-3.9(c) states that related services required by the student’s IEP may be provided through virtual instruction, indicating that virtual instruction is an option, not a requirement. With respect to N.J.A.C. 6A:14-3.9(c)1, the parent must request the provision of virtual services. Pursuant to proposed N.J.A.C. 6A:14-3.9(c)1 and 3, an appropriately configured IEP team, of which the parent is a member, is responsible for determining whether related services will be provided in-person or virtually.

- 34. Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) must be clear as to what might be required of parents if they request any form of distant-related services. The commenter also stated that, although parents are essential IEP team members, the IDEA does not require parents to participate in the actual provision of services. The commenter further stated that parents did their best to support their children during the COVID-19 pandemic when school facilities were closed and providers of special education and related services could not go to students’ homes. The commenter also stated that physical therapists found that the most important factor in effective related services during the COVID-19 pandemic was parent involvement and the therapy was unsuccessful if the parent or caretaker was not able or willing to be involved during distant related service sessions. The commenter stated that there are many reasons why a parent may not be able or willing to be involved in the provision of related services to their child, including employment, caring for other children, not being physically able, or not understanding English well enough to assist. The commenter also stated that some parents may have communication impairments or difficulty following instructions, while some children do not respond well when parents try to instruct them. The commenter further stated that, if the related service provider believes that the same standard of care provided through in-person services cannot occur unless there is a facilitator in the home who works under the direction of the related service provider, the school district will either have to retain a facilitator or provide the related services in-person. The commenter also stated that the facilitator could be the parent, but only if the parent voluntarily assumes the role with knowledge of the expectations for a facilitator. (7)

Response: The Department disagrees that such specificity is necessary because, when developing an IEP in accordance with N.J.A.C. 6A:14-3.7(j), the IEP team must review the student’s anticipated needs. An appropriately configured IEP team, of which the parent is a member, is responsible for determining whether related services will be provided in-person or virtually.

- 35. Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c)1i requires a parent requesting virtual related services to obtain “a written order from the student’s physician

verifying the projected need for confinement at the student’s residence or other treatment setting.” The commenter stated that this requirement is burdensome and unnecessary as all students with disabilities receiving services pursuant to N.J.A.C. 6A:16-10 have already submitted documentation from the student’s physician as to the need for confinement in the home or another out-of-district setting due to their temporary or chronic health condition. (7)

Response: The Department disagrees that the documentation regarding virtual related services is burdensome and unnecessary. The documentation submitted pursuant to N.J.A.C. 6A:16-10 can address both instruction and related services, serving the same purpose for N.J.A.C. 6A:14-3.9(c)1 as it does N.J.A.C. 6A:16-10.

36. **Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c)1ii says that the school district’s school physician will “verify the student’s need for virtual related services.” The commenter also stated that this requirement would clearly violate the IDEA because the school physician has already verified that the student with disabilities is confined to home or another out-of-district setting due to their temporary or chronic health condition, pursuant to N.J.A.C. 6A:16-10.1. The commenter further stated that the determination as to whether the student with disabilities needs related services has already been made by their IEP team, at a meeting involving the parent, and that special education and related services must be implemented in conformity with the IEP. The commenter also stated that the IEP sets forth where and how the services will be provided and, if an IEP includes related services, the related services must be provided as set out in the IEP unless and until the IEP team, including the parent, meets and decides that the IEP needs to be changed. (7)

Response: The Department disagrees that proposed N.J.A.C. 6A:14-3.9(c)1ii violates the IDEA. The IEP team develops the IEP pursuant to 20 U.S.C. 1414(d)3, including if the student with disabilities requires related services. Proposed N.J.A.C. 6A:14-3.9(c)1ii does not determine if the student with disabilities requires related services but rather permits a student on home instruction because of a chronic or temporary condition to receive the related services virtually. Proposed N.J.A.C. 6A:14-3.9(c)1iv will require an appropriately configured IEP team, of which the parent is a member, to meet and determine whether related services will be provided virtually or in-person. (Please see the response to Comment 10 for details regarding changes at N.J.A.C. 6A:14-3.9(c)1iv. Pursuant to N.J.A.C. 6A:16-10.1(a)1i, the school physician may contact the student’s physician to secure additional information concerning the student’s diagnosis or need for treatment and either verify the need for home instruction or provides to the district board of education reasons for denial. The school physician may verify the same information for related services at the same time, asking questions of the student’s physician regarding both home instruction and related services.

37. **Comment:** The commenter stated that the IDEA requires special education and related services that are provided to the student to be based on peer-review research to the extent practicable. The commenter also stated that N.J.S.A. 45:1-62.d(1) requires the standard of care for telemedicine to be equal to the standard of care for in-person services. The commenter further stated that the Department’s presentation regarding proposed N.J.A.C. 6A:14-3.9(c) at the May 3, 2023, State Board meeting did not provide links or citations to support its assertions that a recently released topical briefer from the United States Department of Education states that research and data suggest that the provision of related services virtually can be as effective as services delivered in person and most of the studies on distant related services were with adults, not school-age children with disabilities. The commenter also stated that a 2020 United States Department of Education topical issue brief addressing online and/or virtual instruction during school closures indicates that there was limited empirical evidence regarding online learning and the lack of

research and policy may inadvertently result in instruction that is not specially designed to address the unique needs of students with disabilities. The commenter further stated that, in the same presentation, the Department indicated that research on the remote provision of physical therapy, occupational therapy, speech-language therapy, and counseling services indicates a student benefit, but did not provide a citation to any research supporting the assertion. The commenter stated that a search revealed no peer-reviewed research supporting the use of “remote related services” to students with disabilities as defined at N.J.A.C. 6A:32-13.1. The commenter also stated that most of the studies regarding distant related services were with adults and not school-age children with disabilities. The commenter further stated that research shows that telehealth counseling services using cognitive behavioral therapy in adult populations have proven effective across a range of disorders, but that evidence of effectiveness diminishes as the targeted parties get younger. (7)

Response: The IDEA requires that special education and related services provided to students are based on peer-reviewed research, to the extent practicable. Temporary, virtual related services are a matter for consideration by the IEP team based on the student’s individual needs. Pursuant to proposed N.J.A.C. 6A:14-3.9(c)1 and 3, the IEP team views a student’s unique needs as the foremost factor, not peer-reviewed research.

38. **Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) states that “the school district shall be responsible for the cost” of providing the related services and the cost “shall include the cost of any needed equipment.” The commenter stated that, as the IDEA requires that a classified student with disabilities receive a “free” appropriate public education, the proposed regulation needs to expressly state that a parent will not bear any of the cost to provide the same standard of care when related services are provided in the home as compared to in-person, including, but not limited to, the cost of reliable access to the internet, cost of supplies, equipment, or software, and a facilitator. (7)

Response: The commenter’s requested change is unnecessary as proposed N.J.A.C. 6A:14-3.9(c)1v states that the school district *shall* be responsible for the cost of providing virtual related services, including necessary equipment, such as the internet, hardware and software, that the student with disabilities will require.

39. **Comment:** The commenter stated that the IDEA at 34 C.F.R. 300.109 requires states to have “in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities ... and a detailed timetable for accomplishing this goal.” The commenter also stated that proposed N.J.A.C. 6A:14-3.9(c) would separate students with disabilities with temporary or chronic health conditions who are on home instruction and treat them differently from students with disabilities who are on home instruction but do not have temporary or chronic health conditions. The commenter further stated that this would prevent students with disabilities who are covered by the proposed regulation from achieving full educational opportunity available to other students with disabilities who are on home instruction but do not have a temporary or chronic health condition. (7)

Response: The Department disagrees. Proposed N.J.A.C. 6A:14-3.9(c) will not separate or treat differently students with disabilities with temporary or chronic health conditions on home instruction from students with disabilities who are on home instruction without temporary or chronic health conditions. Students with disabilities on home instruction without temporary or chronic health conditions already have the delivery of their related services settled. They are not facing an upheaval to their routine and will continue in the same manner as always. This is not true for students with disabilities who have a temporary or chronic health condition and become confined to their home or another location. Allowing virtual related services will help the qualified students with disabilities maintain their routine. Proposed N.J.A.C. 6A: 14-3.9(c) will

not prevent students with disabilities covered by the proposed regulation from achieving their full educational opportunity. In fact, the proposed regulation provides an option that will enable students with disabilities to maintain pace with other students and to keep up with related services if they are on home instruction because of a chronic or temporary condition and unable to leave the confinement for a certain amount of time.

40. **Comment:** The commenter stated that proposed regulation N.J.A.C. 6A:14-3.9(c) would violate the rights of students with disabilities under Section 504 of the Rehabilitation Act, in addition to violating students' rights under IDEA. The commenter also stated that discriminatory actions prohibited under Section 504 include providing a qualified student with disabilities a service that is not equal to that afforded others, which, the commenter contended, reinforces the need to require that the same standard of care and effectiveness must occur in distant related services as would occur during in-person services. The commenter further stated that Section 504 also prohibits providing different services to students with disabilities or to any class of persons with disabilities "unless such action is necessary to provide qualified handicapped persons with aids, benefits or services that are as effective as those provided to others," but the commenter was unaware of any studies showing that in-person related services for students with disabilities would not be effective and distant related services would be effective. The commenter also stated that Section 504 says that a recipient of Federal funds may not deny a qualified student with disabilities the opportunity to participate in services that are not different from services for non-disabled people despite the existence of separate or different services, but pursuant to proposed N.J.A.C. 6A:14-3.9(c), students with disabilities who have temporary or chronic health conditions and who are on home instruction pursuant to N.J.A.C. 6A:16-10.1 will be treated differently than students with disabilities placed on home instruction by their IEP teams, some of whom may also have chronic health conditions. The commenter further stated that the students with disabilities who are placed on home instruction by their IEP teams will receive only in-person related services while students with disabilities eligible pursuant to proposed N.J.A.C. 6A:14-3.9(c) may receive related services through telemedicine or electronic communications, including virtual, remote, or other online platforms. The commenter stated that students with disabilities eligible pursuant to proposed N.J.A.C. 6A:14-3.9(c) will also be treated differently from students with disabilities who are placed on home instruction by their IEP team but do not have a temporary or chronic health condition because the latter group of students will receive in-person related services except when a school district or school facility is closed pursuant to N.J.S.A. 18A:7T-9.b or c. The commenter also stated that, to comply with Section 504, students with disabilities and their parents must be informed that they have the option of receiving in-person related services instead of distant related services. (7)

Response: Proposed N.J.A.C. 6A:14-3.9(c) is meant to be a temporary service that allows a student with disabilities to continue to receive related services that would be received in person under normal circumstances. Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options for the provision of related services when a student is receiving services at home due to an acute or chronic medical condition, school closure, or quarantine and to close a gap that exists regarding the provision of special education and related services to student with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in these specific circumstances and proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. Pursuant to N.J.A.C. 6A:14-3.9(c)1 and 3, an appropriately configured IEP team, of which the parent is a member, is responsible for determining whether related services will be provided in-person or virtually.

- 41. Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) recognizes that telehealth may be the only possible method to provide related services in some situations and that it can be a viable short-term alternative to in-person services. **(3)**
Response: The Department thanks the commenter for the support.
- 42. Comment:** Recognizing staff shortages and an increasing number of students requiring related services, the commenter stated that the proposed amendments at N.J.A.C. 6A:14-5.1(c) are a sensible step to easing the current stress on school districts and families of children receiving special education services. **(3)**
Response: The Department thanks the commenter for the support.
- 43. Comment:** The commenter stated that the proposed amendment at N.J.A.C. 6A:14-5.1(c) will loosen restrictions without fundamentally altering the way service is provided. The commenter also stated that the proposed amendment will help to prevent the disruption of services if the certified physical therapist is unavailable to be present when related services are being rendered by a physical therapy assistant. **(3)**
Response: The Department thanks the commenter for the support.



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

Proposal Level
October 4, 2023

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
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:40-6 to -12.4, 18A:46-1 et seq., and 18A:46A-1 et seq.;
and 20 U.S.C. §1400 et seq.; 29 U.S.C. §794; U.S. P.L. 108-446; and 34
C.F.R. Part 300.
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:14-1.3, which contains 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 contain 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 to 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 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 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 virtual instruction, 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.

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 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** or ***thus***; deletions indicated in brackets [thus] or [[thus]]).

Chapter 14. Special Education

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.**

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...

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~~ **which include]]** virtual ~~[[, remote, or other online platforms]]~~ ***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 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.

***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) 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) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a bachelor's degree in education, psychology, or a related field from an accredited institute of higher education and shall work under the supervision of certified district board of education personnel.
 - iv. Home instruction; and
 - v. Speech-language services provided by a speech-language specialist when a district board of education or private school for students with disabilities is unable to hire sufficient staff to provide the service.
2. For students attending nonpublic schools, the district board of education in which the facility is located may contract for the following services:
- i. Evaluation, determination of eligibility, classification, and the development of a service plan;
 - ii. Supplementary instruction, speech-language services, and home instruction for students determined eligible for such services; and

- iii. English as a second language pursuant to N.J.A.C. 6A:15 and compensatory education pursuant to N.J.S.A. 18A:46A-2.e for students eligible for such services.
- (d) District boards of education may purchase services listed under (c)1 and 2 above from Department of Education approved clinics and agencies with prior written notice to the Department of Education through the county office of education according to the following:
 - 1. Notice of the intent to purchase services shall include the proposed terms of the contract;
 - 2. The notice shall be effective for one year; and
 - 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.