

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 adoption level document includes three sections – [a comment and response form](#), [a summary of the proposed amendments](#) and [the rule text of the proposed amendments](#).

3. **Comment:** The commenter stated that the terms “synchronous” and “asynchronous” must be defined. **(1)**
Response: The Department disagrees. The terms “synchronous” and “asynchronous” do not appear at N.J.A.C. 6A:14-3.9. as proposed for amendment, and, therefore, do not need to be defined.
4. **Comment:** The commenter stated that because speech-language therapy needs to be individually tailored to each student’s habilitation needs and the student should receive immediate feedback and/or shaping and correcting of inaccurate or inappropriate responses from the speech-language specialist during each therapy session, the proposed amendments must stipulate that speech-language therapy must be delivered synchronously and that asynchronous “store and forward” technology may be used only to share data, images, or information about the student. **(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. N.J.A.C. 6A:14-3.9(c) addresses only the ability to provide related services virtually and does not preclude speech-language therapy from being delivered synchronously. Furthermore, the individualized education program (IEP) team is responsible for determining how related services will be provided consistent with each student’s present IEP.
5. **Comment:** The commenters stated that proposed N.J.A.C. 6A:14-3.9(c) should be amended to require that a facilitator is present during therapy sessions provided via virtual platforms to monitor technology and student behavior. The commenters also stated that the proposed amendments should require school district administrators to confirm that a facilitator is present and on site with the student to assist with technology and student behavior during virtual therapy sessions. **(1 and 3)**
Response: The Department declines to make the suggested change. Proposed N.J.A.C. 6A:14-3.9(c) addresses only the ability to provide related services under certain conditions. The IEP team is responsible for determining how related services will be provided consistent with each student’s present IEP.
6. **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. The commenter suggested that the Department seek authority from the New Jersey Legislature to expand virtual related services to students forced to quarantine because of exposure to a communicable disease, but not if students are on home instruction due to a temporary or chronic health condition. **(3)**
Response: The Department disagrees. N.J.S.A. 18A:4-15, in conjunction with N.J.S.A. 18A:7F-9 and 18A:40-7, provides the statutory authority to amend existing rules at Title 6A of the New Jersey Administrative Code. 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. The proposed amendments at N.J.A.C. 6A:14-3.9 are the result of the Department seeking to align related services with N.J.A.C. 6A:16-10.1 and

recognizing the benefits of allowing virtual related services for students with disabilities in certain situations such as when a student with disabilities has a temporary or chronic health condition, during a school closure, or the student needs to be quarantined.

7. **Comment:** The commenter agreed with the Department that virtual related services should be an option for quarantined students with disabilities, but not for students with disabilities on home instruction due to temporary or chronic health conditions, as set forth at proposed N.J.A.C. 6A:14-3.9(c)1. The commenter stated that students may need, and benefit from, in-person instruction and their right to such instruction should be protected. (3)

Response: The Department disagrees that students with disabilities who are on home instruction due to temporary or chronic health conditions should not have access to virtual related services. Virtual related services are optional in only very limited circumstances and are not mandatory. Proposed N.J.A.C. 6A:14-3.9(c) state that “[r]elated services required by the student’s IEP may be provided through virtual instruction.” The use of “may” is a clear indicator that it is a permissive choice and is not required. That the use of virtual related services is only an option is further supported at proposed N.J.A.C. 6A:14-3.9(c)1i, which states that, 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. The use of “request” clearly indicates that virtual related services are not mandatory. Also, proposed N.J.A.C. 6A:14-3.9(c)1i states that only the parent of the student with disabilities can make a request for virtual related services. School districts cannot use proposed N.J.A.C. 6A:14-3.9(c) to force virtual related services upon students with disabilities, as only parents of students with disabilities may begin the process of requesting virtual services. Furthermore, if the parent decides to opt for virtual related services, pursuant to proposed N.J.A.C. 6A:14-3.9(c)1iv, the IEP team must meet to determine whether each related service will be provided virtually or in-person. The proposed amendments will require virtual instruction to be delivered consistent with a student’s IEP. Therefore, the rights of the student with disabilities are protected.

8. **Comment:** The commenter stated that proposed N.J.A.C. 6A:14-3.9(c) needs to clearly state that in-person related services are the default and that virtual services can be provided only with parent consent. (3)

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. For a student confined to the home due to a temporary or chronic health condition, the process must be initiated by a request from the parent with a written order from the student’s physician. Furthermore, if the parent does not make a request for virtual related services, then the only option left for a student with disabilities to receive related services is through in-person services. Thus, in-person services are the default option unless the parent exercises their right to request virtual related services. The IEP team, which includes the parent and related services providers, will then work together to determine the best course of action regarding each related service required by the IEP.

9. **Comment:** The commenter requested that the Department amend proposed N.J.A.C. 6A:14-3.9(c) to provide standards or criteria for implementing virtual instruction or

instruction for incorporating ethical or professional guidelines. (3)

Response: The Department declines to make this change. Proposed N.J.A.C. 6A:14-3.9(c)1i sets forth the criteria for implementing virtual related services and not instruction; therefore, incorporating ethical or professional guidelines is the same as for students receiving services in the school or in-person in the home or other setting. Proposed N.J.A.C. 6A:14-3.9(c)1i closes a gap that exists regarding the provision of special education and related services to students with disabilities. Existing N.J.A.C. 6A:16-10.1 permits the provision of educational services through virtual means in specific circumstances and proposed N.J.A.C. 6A:14-3.9(c) simply provides the same flexibility for the provision of related services. The proposed amendments will require virtual instruction to be delivered consistent with a student's IEP. The IEP team will work to evaluate the best way to ensure that the student with disabilities receives a plan of action for the related services best suited to meet the student's needs.

10. **Comment:** The commenter requested that the Department amend proposed N.J.A.C. 6A:14-3.9(c) to set forth factors to be used in determining whether virtual related services are appropriate for a student with a disability because IEP teams will not be required to use specific factors in the determination if not required pursuant to the proposed rule. The commenter stated that the Department, in its response to Comment 13 of the Proposal Level comments and responses, agreed that certain factors should be discussed and considered by the IEP team. (3)

Response: The Department disagrees. Proposed N.J.A.C. 6A:14-3.9(c)1iv and 3i require the IEP team to meet and determine the best course of action for a student with disabilities by considering all factors relevant to the student's situation. Each situation is different and the proposed rules cannot address every factor that may arise. The IEP team is responsible for deciding if virtual or in-person services are appropriate. The proposed amendments will require virtual instruction to be delivered consistent with a student's IEP. Therefore, the rights of the student with disabilities are protected.

11. **Comment:** The commenter requested that the Department amend proposed N.J.A.C. 6A:14-3.9(c)1iv to specify that all relevant related service providers are part of the IEP team for the determination of whether related services can be provided virtually or in-person. (3)

Response: The Department disagrees. Pursuant to 20 U.S.C. 1414(d)1Bvi, individuals who have knowledge of, or special expertise regarding, the student with disabilities can be part of the IEP team at the discretion of either the parent or the school district. The individuals can include related services personnel, as appropriate. Moreover, parental consent is required before a relevant or required IEP team member can be excused from an IEP team meeting (see N.J.A.C. 6A:14-2.3(k)9 and 10.). There is no need for a separate requirement that all relevant IEP team members be present when virtual instruction is discussed at an IEP meeting.

12. **Comment:** The commenter disagreed with the Department's decision and rationale to provide virtual instruction under the circumstances set forth at proposed N.J.A.C. 6A:14-3.9(c), but not for students with disabilities out of school for other reasons. The commenter stated that the disparate treatment of students with disabilities with temporary and chronic health conditions from those without conditions would violate their right to a full educational opportunity under the Individuals with Disabilities Education Act (IDEA), as well as their right to non-discriminatory treatment under Section 504 of the Federal Rehabilitation Act of 1973. The commenter also stated that students with disabilities with temporary or chronic health conditions must have equal access to in-person related services as all other students with disabilities and, conversely, students with disabilities who lack

temporary or chronic health conditions but are out of school must be offered the same opportunity to access virtual related services. The commenter further stated that the Department's sole rationale is for proposed N.J.A.C. 6A:14-3.9(c)1 is to offer flexibility to school districts and, therefore, proposed rule is arbitrary and capricious. The commenter also stated that, without standards or criteria for ensuring that the services provided are equivalent to in-person services, students with disabilities will suffer harm like they did during the COVID-19 pandemic and their rights to thorough and efficient (T&E) education and free and appropriate education (FAPE) will be violated. **(3)**

Response: Proposed N.J.A.C. 6A:14-3.9(c) is intended to provide options, upon request by the parent, 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. 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 the specified circumstances to close this existing gap. Further, N.J.A.C. 6A:14-3.1 and 3.2 already identify and delineate requirements for personnel who may evaluate students with disabilities and provide special education and related services. There is no need for separate criteria for the provision of in-person versus virtual instruction. The IEP team will continue to ensure that the student with disabilities receives related services consistent with the student's IEP.

13. Comment: The commenter stated that the proposed amendment may allow school districts to justify virtual instruction for unintended reasons, such as cost savings. **(4)**

Response: The Department disagrees. Proposed N.J.A.C. 6A:14-3.9(c) does not allow the provision of virtual related services because it will result in cost savings. 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. Proposed N.J.A.C. 6A:14-3.9(c)1i requires the student's parent to request virtual related services to begin the process of determining if a student with disabilities who has a temporary or chronic health condition is eligible to receive virtual related services. Proposed N.J.A.C. 6A:14-3.9(c)3 allows a student with disabilities to receive virtual related services if a local health agency or officer or the student's physician determines that quarantining the student is necessary. Neither proposed rule allows the school or school district to decide whether to provide virtual services. Proposed N.J.A.C. 6A:14-3.9(c)2 regards closure of schools and school districts when no one is allowed in school buildings.

14. Comment: The commenter stated that the Economic Impact analysis for the proposed rulemaking is wrong. The commenter stated that the proposed amendments at N.J.A.C. 6A:14-3.9(c) will lead to additional costs for school districts because they will have to hire more assistants, provide technology to families, when necessary, and upgrade teachers' equipment so they can effectively engage students with disabilities. The commenter also stated that the proposed rulemaking will impact jobs because there will be a need for many new jobs to attempt to effectively implement the proposed amendments. The commenter further stated that the impact analysis on racial and ethnic community criminal justice and public safety is wrong and pointed to comments submitted by other members of the public regarding students in detention settings. The commenter stated that the public comments are being ignored in favor of Department of

Corrections policies. (4)

Response: The Department disagrees. The economic impact of proposed N.J.A.C. 6A:14-3.9(c) will not create additional expenses for district boards of education, as the proposed rulemaking 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 students with disabilities. Existing N.J.A.C. 6A:16-10.1 already 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. Furthermore, the policies implemented at the Juvenile Justice Commission and the 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. Existing regulations at N.J.A.C. 6A:14-8.1 and 8.3, 6A:16-10.1, and 6A:17-3 detail how students with disabilities will receive special education and related services. N.J.A.C. 6A:14-8.1(a) states that special education programs provided in State facilities shall be operated pursuant to N.J.A.C. 6A:17-3 and 6A:14. N.J.A.C. 6A:17-3.3 states that each State agency shall ensure all students with a disability in the agency's State facilities are provided a free and appropriate public education pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., and shall provide special education and related services as stipulated in the IEP in accordance with the rules governing special education at N.J.A.C. 6A:14. Furthermore, N.J.A.C. 6A:17-3.5(b) states that each State agency shall ensure all educational programs are provided in locations separate from sleeping areas, except where appropriate for safety or medical reasons.

15. **Comment:** The commenter sought clarification regarding whether proposed N.J.A.C. 6A:14-3.9(c) requires the student's physician to order the virtual related services for a student with disabilities or if another medical professional or nurse practitioner can issue the order. (5)
Response: Proposed N.J.A.C. 6A:14-3.9(c)1i states that only the student's physician can provide the written order for virtual related services. Therefore, only the physician chosen by the parent can provide the order.
16. **Comment:** The commenter asked for clarification regarding whether N.J.A.C. 6A:14-3.9(c) allows a student with disabilities to qualify for virtual related services if the student is going to be confined for less than 10 consecutive days or 20 cumulative days. (5)
Response: No, proposed N.J.A.C. 6A:14-3.9(c)1i allows students with disabilities to receive virtual related services if they are confined for more than 10 consecutive days or 20 cumulative days. Proposed N.J.A.C. 6A:14-3.9(c) aligns with the existing regulation for virtual instruction at N.J.A.C. 6A:16-10.1(a)1.
17. **Comment:** The commenter asked if, pursuant to proposed N.J.A.C. 6A:14-3.9(c), virtual related services can be determined and physician verification obtained at the time the IEP is written to minimize the disruption of services for the student with disabilities. (5)
Response: If it is known to both the parents and school district that a student with disabilities will face confinement that will last for more than 10 consecutive days or 20 cumulative days, the parents may request virtual related services. Once the physician's verification is obtained and the school district's physician approves, the IEP team will determine which related service(s) required by the IEP can be provided virtually or in-person; therefore, it will be implemented through the IEP at the time of its creation.

- 18. Comment:** The commenter stated that the change from “direction” to “supervision” of assistants in the proposed amendment at N.J.A.C. 6A:14-5.1(c)1iii(2) is troubling because guidance regarding the definition of “supervision” is not provided. The commenter also stated that “supervision,” rather than “direction,” often leads to assistants/technicians being on their own with students and simply submitting signatures and progress reports to physical therapists. **(4)**
- Response:** The Department disagrees that guidance is required because existing regulations allow physical therapy assistants to provide services under the direction of a physical therapist. The proposed amendment at N.J.A.C. 6A:14-5.1(c)1iii(2) is intended to make the rule consistent with N.J.A.C. 6A:14-3.9(a)4 and with the general supervision requirements set forth at N.J.A.C. 13:39A, State Board of Physical Therapy, which governs practice by licensed physical therapists and physical therapy assistants. Pursuant to the existing regulations, physical therapy assistants employed directly by a local educational agency (LEA) are permitted to provide services “under the direction” of a certified and licensed physical therapist. Existing regulations do not permit physical therapy assistants contracted through an approved clinic/agency to provide services without a certified physical therapist present. The proposed amendment will align the supervision requirements for the provision of services by a physical therapy assistant with the definition of “general supervision” at N.J.A.C. 13:39A-2.1, which states that the supervising physical therapist must be available at all times by telecommunications but is not required to be on site for direction and supervision.
- 19. Comment:** The commenter stated that physical therapy assistants previously were not allowed to conduct physical therapy sessions virtually, but they are now able to do so as long as they are supervised in accordance with American Physical Therapy Association bylaws that state that a physical therapist needs to be directly involved in or directly provide the physical therapy services every six sessions or every two weeks, whichever comes first. The commenter asked for clarification whether proposed N.J.A.C. 6A:14-5.1(c) allows a physical therapy assistant to provide virtual sessions with a physical therapist being directly involved supervising the physical therapy assistant every six sessions or every two weeks. **(6)**
- Response:** Proposed N.J.A.C. 6A:14-5.1(c)1iii2 requires physical therapy assistants to work under the supervision of a certified physical therapist, and proposed N.J.A.C. 6A:14-3.9(a)4 states that physical therapy may be provided by physical therapy assistants under the supervision of the therapist in accordance with all applicable State statutes and rules. N.J.A.C. 13:39A-7.2(c)1 and 7.3(e)1 incorporate the American Physical Therapy Association bylaws. Therefore, a physical therapist must always supervise a physical therapy assistant when virtual services are being conducted.
- 20. Comment:** The commenter suggested that the Department consider waiting for the new Commissioner to consider the proposed amendments at N.J.A.C. 6A:14-3.9 and 5.1. **(3)**
- Response:** The Department disagrees. The Department is following the timeline for the rulemaking process. Furthermore, N.J.S.A. 18A:4-10 and 15 provide the State Board with general supervision and control of public education in the State, except higher education, and rulemaking authority. Acting Commissioner Dehmer began on February 12, 2024.
- 21. Comment:** The commenter stated a third-party advocate should be appointed on a student’s behalf when the student’s parents cannot be present for an IEP team meeting. **(4)**
- Response:** Existing N.J.A.C. 6A:14-2.3(k) provides protections to ensure parental participation in IEP meetings, including the scheduling of meetings at mutually agreeable

dates and times and the opportunity for parents to participate by alternate means. If the parent cannot attend, the parent may call into the meeting via the telephone or reschedule the meeting. Furthermore, 34 C.F.R. 300.321(a)6 states that, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, may attend the IEP meeting. The Federal regulation allows parents to invite individuals to the IEP team meeting if they have a strong relationship with the student. If a parent cannot attend the IEP team meeting, the invitee may still attend and act as advocate for the student.

22. **Comment:** The commenter stated that the Department previously indicated that information specific to multilingual learners (MLs) with disabilities could not be included at N.J.A.C. 6A:15, Bilingual Education. The commenter also stated that the information regarding MLs with disabilities, as well as regulations and guidelines surrounding classification and programming, would need to be included in the readoption of N.J.A.C. 6A:14, Special Education. The commenter further stated that the Department has provided very little specific direction regarding MLs at N.J.A.C. 6A:14 and protections for MLs with disabilities need to be significantly strengthened. (7)

Response: This comment is outside the scope of the rulemaking because the current rulemaking proposes amendments at N.J.A.C. 6A:14-1.3, 3.9, and 5.1, and is not a readoption of the entire chapter.

23. **Comment:** The commenter expressed the support for the Department's presentation on gifted and talented and the breakdown of New Jersey's gifted and talented population, including the percentage of MLs. The commenter stated the breakdown of dually identified MLs with disabilities in New Jersey, but the number of doubly exceptional students is not available for a Statewide count or by school district. (7)

Response: This comment is outside the scope of the rulemaking.

24. **Comment:** The commenter stated that the lack of specificity regarding MLs and their classification as MLs is not sufficiently indicated at N.J.A.C. 6A:14, particularly in relation to second language acquisition professionals and/or English as a second language (ESL) and bilingual teachers who provide input to the child study team, language translation of documents including the IEP, and the appropriate manner for determining primary language for student testing. The commenter also stated that school districts have no clear direction on these and other matters, which the commenter indicated leads to different educational experiences for every ML with disabilities. The commenter further stated that school district interpretation of guidance results in inequities and disparities for MLs with disabilities. The commenter also stated that school districts make incorrect assumptions that MLs must wait for one to two years prior to being considered for special education evaluation. The commenter stated that ESL and bilingual teachers are not actively included as language specialists with in-depth knowledge, data, and information on students' cultural and linguistic backgrounds to give input on students' second language proficiency levels as they are evaluated, which can lead to incorrect special education classification for students with disabilities. The commenter requested that the Department amend N.J.A.C. 6A:14 to clarify the steps and personnel responsible for evaluating MLs and ensure that all family members/guardians receive information in the appropriate primary language. (7)

Response: This comment is outside the scope of the rulemaking because the current rulemaking proposes amendments at N.J.A.C. 6A:14-1.3, 3.9, and 5.1, and is not a readoption of the entire chapter.

25. **Comment:** The commenter proposed an increase in professional development and information sharing regarding the adopted amendments at N.J.A.C. 6A:15, Bilingual Education. The commenter stated that there has not been a significant presentation of new information in the chapter on a large scale and that there has been confusion regarding timelines for implementation, particularly in the new preschool section. The commenter also stated a presentation that the commenter observed included inaccurate information regarding ML preschoolers requiring ESL instruction because there is no clear public guidance from the Department. The commenter stated that NJTESOL/NJBE has been sharing information to the best of its ability but asks the Department to assist in a widespread sharing of correct information about N.J.A.C. 6A:15, as readopted with amendments. (7)
- Response:** This comment is outside the scope of the rulemaking, which does not involve N.J.A.C. 6A:15.

Agency-initiated Changes

1. At Adoption Level, the Department proposes to amend N.J.A.C. 6A:14-3.9(a) to delete the last comma because it was incorrectly inserted during the editing process.
 - (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.
2. At Adoption Level, the Department proposes to amend N.J.A.C. 6A:14-3.9(c)1vi to delete the hyphen in “virtual-related services” because the hyphen was incorrectly inserted during the editing process.
 - 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]] *virtual related* services, and, if appropriate, revise the student’s IEP.**
3. At Adoption Level, the Department proposes to amend N.J.A.C. 6A:14-5.1(c) to delete the use of the phrase “pursuant to” because the use of the phrase in this instance is inappropriate. Instead, the Department proposes to add “under” as it will restore the original and intended meaning to N.J.A.C. 6A:14-5.1(c).

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline [under] [[pursuant to]] *under* which they are providing services, provide services [under] **pursuant to** this subsection if certified through the emergency certification process.



State of New Jersey
DEPARTMENT OF EDUCATION
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Adoption Level
May 1, 2024

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

To: Members, State Board of Education
From: Kevin Dehmer
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 sets forth definitions regarding terms used in the chapter. The Department also proposes to amend N.J.A.C. 6A:14-3.9 and 5.1, which both set forth rules regarding the provision of related services to students with disabilities.

The following is a summary of the proposed amendments.

Subchapter 1. General Provisions

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

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

The Department proposes an amendment at N.J.A.C. 6A:14-1.3 to 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 pursuant to the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules. The Department proposes to clarify that physical therapy may be provided by physical therapy assistants pursuant to the supervision of a certified physical therapist.

The Department proposes new N.J.A.C. 6A:14-3.9(c) to allow for the provision of related services through virtual instruction, as appropriate, and as required by the student's IEP. The proposed rule also sets forth the following conditions for when the related services can be provided in accordance with the subsection: a student with a disability is unable to attend school due to a temporary or chronic medical condition, a school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c, and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13, or the student requires a mandatory period of isolation/quarantine for at least five days because the student has contracted a communicable disease or has been exposed to a communicable disease.

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

Subchapter 5. Providing 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 pursuant to a contract between a school district or approved private school for students with disabilities and a clinic or agency to be provided by physical therapy assistants who work in the presence and pursuant to the supervision of a certified physical therapist. The Department proposes to require the work to be only pursuant to the supervision of a certified physical therapist (rather than presence and supervision) for consistency with the amendments proposed at N.J.A.C. 6A:14-3.9(a)4.

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

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

Social Impact

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

Economic Impact

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

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

Federal Standards Statement

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

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed amendments impact district boards of education, approved private schools for students with disabilities (APSSDs), and clinics and agencies. (APSSDs and clinics and agencies could be considered small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not pose any additional reporting, recordkeeping, or other compliance requirements on APSSDs or clinics and agencies.

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

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

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the rules proposed for readoption and the proposed amendments follows (additions 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.

...

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 virtual instruction, as appropriate and pursuant to the following conditions:**
1. **The student is confined to the home or another out-of-school setting due to a temporary or chronic health condition or a need for treatment that precludes participation in the student's usual educational setting, pursuant to N.J.A.C. 6A:16-10.**
 - i. **To request virtual related services due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written order from the student's physician verifying the projected need for confinement at the student's residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.**
 - ii. **The school district shall forward the written determination to the school physician, who shall verify the student's need for virtual related services. The school physician may contact the student's physician to secure additional information concerning the student's diagnosis or need for treatment and shall either verify the need for**

virtual related services or shall provide to the district board of education the reason(s) for denial.

- iii. The school district shall notify the parent concerning the school physician's verification or reason(s) for denial within five school days after the school district's receipt of the written determination by the student's physician.
- iv. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person. The school district shall provide the student with virtual related services within five school days after the school district's receipt of the school physician's verification or, if verification is made prior to the student's confinement, during the first week of the student's confinement to the home or another out-of-school setting.
- v. The school district shall be responsible for the costs of providing virtual related services, either directly or through a contract with another district board of education, educational services commission, jointure commission, or approved clinic or agency. The costs shall include the cost of any needed equipment.
- vi. When the provision of home or out-of-school instruction exceeds 30 consecutive days in a school year, the IEP team shall convene a meeting to review the continued need for ~~[[virtual-related]]~~ ***virtual related*** services and, if appropriate, revise the student's IEP.

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

- 3. The appropriate local health agency or officer or the student’s physician determines that the student requires a mandatory period of isolation/quarantine for at least five days because the student’s presence in school may jeopardize the health of others because the student has contracted a communicable disease or has been exposed to a communicable disease.**
 - i. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.**

Subchapter 5. Providing Educational and Related Services

6A:14-5.1 General requirements

- (a) 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)l iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and

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

1. For public school students:
 - i. 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.