

3A:71-7.2 Public agency requirements

(a) When a program participant makes a request noted at N.J.A.C. 3A:71-7.1(a) or (b), the public agency shall maintain the confidentiality of all applications or records and ensure that they are accessible only to authorized personnel, except as provided at N.J.A.C. 3A:71-8 and 9.

(b) When verifying that an individual is an ACP program participant, authorized personnel may make a file photocopy of the program participant's authorization card.

1. The authorization card shall be returned to the program participant immediately upon completion of the photocopying; and

2. The photocopy shall be kept with the confidential records of the program participant during the time the records are filed and maintained by the public agency.

(c) A public agency shall use the designated mailing address requested by the program participant and verified by the ACP authorization card unless the public agency has received a written exemption determination from the Director pursuant to the provisions at N.J.A.C. 3A:71-10.

SUBCHAPTER 8. DISCLOSURE OF INFORMATION

3A:71-8.1 Disclosure

No record or related information maintained pursuant to the ACP shall be disclosed by the program manager or public agencies without the expressed written authorization of the program participant or by court order unless release of the record or information is otherwise provided for by this chapter.

SUBCHAPTER 9. INFORMATION RELEASE TO LAW ENFORCEMENT AGENCIES OR UPON COURT ORDER

3A:71-9.1 Release to law enforcement agencies generally

(a) Information about a program participant may be released to a law enforcement agency if:

1. The program participant provides written authorization;

2. (No change.)

3. The law enforcement agency making the request has a bona fide requirement to have access to a program participant's actual address which meets the requirements at N.J.A.C. 3A:71-9.2.

3A:71-9.2 Request for release of records to law enforcement agencies

(a) A request for the release of information concerning a program participant to a law enforcement agency may be honored only if the law enforcement agency submits by mail, a written request on official letterhead to the Director or the Director's designee at ACP, PO Box 717, Trenton, NJ 08625-0717, which contains:

1.-4. (No change.)

3A:71-9.3 Emergency release of records

The program manager may disclose an application, record, or other information about a program participant to a law enforcement agency if the program manager determines that an emergency situation exists, and that the safety or health of a program participant is imperiled by withholding this information.

SUBCHAPTER 10. AGENCY EXEMPTION REQUESTS

3A:71-10.1 Requirements of request for exemption

(a) A public agency requesting an exemption from the provisions of this chapter shall provide a written request to the Director which includes the following:

1. Identification of the statute which demonstrates the public agency's bona fide requirement and authority for the use of the actual address of an individual;

2.-3. (No change.)

4. Identification of the individuals who will have access to the record and how the public agency will maintain confidentiality of the address;

5. An explanation of how the public agency's acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified at (a)1 above; and

6. An explanation of how the disclosed confidential address of the program participant will be used only for the statutory purpose specified

at (a)1 above and the public agency's confirmation that the disclosed address will not be further disclosed or made available in any way to any other person or agency.

3A:71-10.2 Exemption determination

(a) The Director's decision to grant or withhold a requested exemption shall be based on, but not limited to, an evaluation of the information provided pursuant to N.J.A.C. 3A:71-10.1. The decision shall be rendered within 20 days receipt of the public agency's request for exemption.

(b) If the Director determines that a public agency has a bona fide statutory requirement for the use of a program participant's actual address information and that the actual address information will be used only for those statutory purposes, the Director may issue a written exemption determination to the public agency.

(c) A decision granting the request for exemption shall include:

1. A statement as to the public agency's obligation to maintain the confidentiality of a program participant's address information;

2. (No change.)

3. The term during which the exemption is authorized for the public agency where the public agency is making procedural changes that would allow it to accept the substitute address;

4. (No change.)

5. Designation of an address information disposition date after which the public agency may no longer maintain a record of the address information.

(d) A Director's denial of a public agency's exemption request shall be made, in writing, and include a statement of the specific reasons for the denial. When a program participant requests use of the substitute address in a record, and the public agency has received an exemption determination for that record, the public agency shall immediately provide a copy of the Director's written decision to the program participant. The public agency shall notify the ACP's program manager of the applicant's request for use of the substitute address and its decision to deny the request.

3A:71-10.3 Appeal of denial of request for exemption

(a) A public agency may appeal the denial of its request for exemption by providing additional data and information evidencing the steps that have been or are being taken to resolve the basis for the Director's denial determination.

(b) During the review, evaluation, and appeal of a public agency's exemption request, the public agency shall accept the use of a program participant's substitute address.

SUBCHAPTER 11. PROTECTED VOTER RECORDS

3A:71-11.2 Processing of protected voter records

Voter records of program participants shall be processed in accordance with the procedures adopted by the county elections superintendent that ensure the confidentiality of the addresses of all ACP program participants.

(a)

DIVISION ON WOMEN

Notice of Readoption

Displaced Homemaker Programs

Readoption: N.J.A.C. 3A:70

Authority: N.J.S.A. 52:27D-43.24c and 52:27D-43.9a.

Authorized By: Christine Norbut Beyer, M.S.W., Commissioner,
Department of Children and Families.

Effective Date: May 1, 2024.

New Expiration Date: May 1, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.c, the rules at N.J.A.C. 3A:70 were scheduled to expire on May 31, 2024. The purpose of the Displaced Homemaker Trust Fund is to provide a funding source to support programs for displaced homemakers. Subchapter 1 governs the disbursement of grants-in-aid from the Displaced Homemaker Trust Fund

to these programs. Subchapter 2 sets forth the program requirements. Subchapter 3 sets forth the procedural requirements for funding.

The Department of Children and Families has reviewed the rules at N.J.A.C. 3A:70 and found them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education Definitions

Related Services

General Requirements

Adopted Amendments: N.J.A.C. 6A:14-1.3, 3.9, and 5.1

Proposed: November 6, 2023, at 55 N.J.R. 2238(a).

Adopted: May 8, 2024, by the New Jersey State Board of Education, Kevin Dehmer, Acting Commissioner, Department of Education, and Acting Secretary, State Board of Education.

Filed: May 8, 2024, as R.2024 d.053, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: June 3, 2024.

Expiration Date: September 10, 2027.

Summary of Public Comments and Agency Responses:

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

1. Robin Kanis, School Affairs Committee Liaison, New Jersey Speech-Language Hearing Association (NJSHA)
2. Corey Teague, Special Education Advocate, National Action Network
3. Elizabeth Athos, Esq., Senior Attorney, Education Law Center (ELC)
4. Leon Carelli, Education and Special Education Chairman, New Jersey Parent Teacher Association (PTA) Board of Directors
5. Jonathan Pushman, Director of Government Relations, New Jersey School Boards Association (NJSBA)
6. Dawn M. Kuncken, School Physical Therapist, Somerset County Education Services Commission
7. Kathleen Fernandez, Executive Director, New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators (NJTESOL/NJBE)

1. COMMENT: The commenter expressed support for the notice of proposal amendments at N.J.A.C. 6A:14-3.9 and 5.1. (5)

RESPONSE: The Department thanks the commenter for the support.

2. COMMENT: The commenter stated that the Department's proposed amendment at N.J.A.C. 6A:14-1.3, which incorporates the definition of "virtual instruction" at N.J.A.C. 6A:32-2.1, nullifies the use of such instruction pursuant to N.J.A.C. 6A:14-3.9(c)1 and 3 because the definition requires the closure of schools. (3)

RESPONSE: The Department disagrees. The definition at N.J.A.C. 6A:32-2.1 accurately describes "virtual instruction" and describes one condition pursuant to which it is allowable. The proposed amendments at N.J.A.C. 6A:14-3.9(c) include additional conditions that will enable the

Department to more closely align related services to virtual instruction as it referenced at N.J.A.C. 6A:32-2.1 and 6A:16-10.1.

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 (<https://osepideasthatwork.org/sites/default/files/SWDLearning-Providers-508.pdf>) 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 through 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 pursuant to 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,