

Notice of Adoption for N.J.A.C. 6A:14, Special Education

The following is the accessible version of the notice of adoption for N.J.A.C. 6A:14. The notice of adoption document includes two sections – [comments and responses](#) and [agency-initiated changes](#).

Education

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](#) 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, 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) states 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 commenters 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 pursuant to 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 previously 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 pursuant to 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 pursuant to the Individuals with Disabilities Education Act (IDEA), as well as their right to non-discriminatory treatment pursuant to 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 to offer flexibility to school districts and, therefore, the 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 pursuant to 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 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 rules 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 rule 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 rules 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 rules, 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 rules 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 commenters 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 through the telephone or reschedule the meeting. Furthermore, 34 CFR 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 rules 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.

Summary of Agency-Initiated Changes:

1. The Department is changing N.J.A.C. 6A:14-3.9(a) upon adoption to delete the last comma because it was incorrectly inserted during the editing process.

2. The Department is changing N.J.A.C. 6A:14-5.1(c) upon adoption 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).

Federal Standards Statement

The adopted amendments are in compliance with Federal requirements pursuant to the Individuals with Disabilities Education Act (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 and programs to students with disabilities. The adopted amendments ensure the chapter remains consistent with Federal regulations at 34 CFR 300.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

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 - 12. (No change from proposal.)

(b)-(c) (No change from proposal.)

Subchapter 5. Providing Educational and Related Services

6A:14-5.1 General Requirements

(a) – (b) (No change.)

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

1. – 2. (No change from proposal.)

(d) – (e) (No change.)