

**Notice of Termination of Rule Waiver/Modification/Suspension  
Regarding N.J.A.C. 6A:14, Special Education**

The following is the accessible version of the notice of termination regarding rule modifications  
at N.J.A.C. 6A:14.

## **Executive Order No. 103 (2020) Waiver**

### **Education**

#### **State Board of Education**

#### **Notice of Termination of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103 (2020)**

#### **COVID-19 State of Emergency**

#### **Special Education**

#### **General Requirements**

#### **N.J.A.C. 6A:14-1.1**

Notices of Rule Modification Publication: May 4, 2020, at 52 N.J.R. 976(a).

Authority: N.J.S.A. App.A:9-45 and App.A:9-47; Executive Order Nos. 103 (2020), 117 (2020), and 119 (2020); and P.L. 2021, c. 103.

Termination Effective Date: September 8, 2021.

The Department of Education (Department) terminates an emergency adoption of a temporary modification to specific rules at N.J.A.C. 6A:14, Special Education. In response to the COVID-19 pandemic, section 6 of Executive Order No. (EO) 103 (2020) authorized agency heads to waive/suspend/modify any existing rule where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the State Board of Education, at the April 1, 2020, meeting, approved modifications to the rules regarding special education to provide flexibility to school districts and educational agencies in the operations of schools and the

delivery of education and services. The rule modifications at N.J.A.C. 6A:14 became effective on April 14, 2020, and the notice of rule modification was published in the Ma, 4, 2020 New Jersey Register at 52 N.J.R. 976(a).

The rules governing the delivery of special education and related services to students with disabilities were modified to also allow for special education and related services to be provided through electronic communications, remote, virtual, or other online platforms to ensure that school districts and educational agencies were capable of meeting their legal obligation to provide a free and appropriate public education, as required by the Individuals with Disabilities Education Act (IDEA), during a period of extended school closures to the greatest extent possible. N.J.A.C. 6A:14-1.1, 3.9, and 5.2 were affected by this rule modification.

Modified N.J.A.C. 6A:14-1.1(d)5 allows special education and related services to be provided through electronic communications, virtual, or other online platforms as appropriate and as required by a student's individualized education program (IEP), during an extended public-health related school closure. Modified N.J.A.C. 6A:14-3.9(a) and 5.2(f) allow, during an extended public health related school closure, for related services to be provided through telemedicine and telehealth or through electronic communications, which include virtual, remote, or other online platforms, as appropriate and as required by the student's IEP to the greatest extent possible.

Although the declared public health emergency has expired, P.L. 2021, c. 103, provides that rule waivers/suspensions/modifications adopted under the authority of EO 103 will expire on January 11, 2022. P.L. 2021, c. 103 also allows agency heads to terminate rule waivers/suspensions/modifications prior to the expiration date. Since all schools will be returning to full-time, in-person instruction for the 2021-2022 school year, the Department terminates modified N.J.A.C. 6A:14-1.1(d)5. If certain conditions require a school to be closed for in-school

instruction for more than three school days, P.L. 2020, c. 27, will allow special education and related services to be provided through electronic communications, virtual, or other online platforms during the closure.

The Department has determined that modified N.J.A.C. 6A:14-3.9(a) and 5.2(f) should not be terminated at this time to continue to allow related services to be provided through telemedicine and telehealth or through electronic communications as appropriate and as required by the student's IEP to the greatest extent possible. The Department also plans to pursue amendments at N.J.A.C. 6A:14 to make permanent certain provisions allowing related services to be provided through electronic communications or virtual or other remote platforms.