

Proposed Termination of Temporary Rule Modification at N.J.A.C. 6A:14, Special Education

The following is the accessible version of the proposed termination of temporary rule modification at N.J.A.C. 6A:14. The adoption level document includes two sections – [summary](#) and [rule text](#).



State of New Jersey
DEPARTMENT OF EDUCATION
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Adoption Level
September 8, 2021

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

To: Members, State Board of Education

From: Angelica Allen-McMillan, Ed.D., Acting Commissioner

Subject: N.J.A.C. 6A:14, Special Education

Reason For Action: Termination of temporary rule modification

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; Executive Order No. 103 (2020); and P.L. 2021, c. 103

Effective Date: September 8, 2021

Summary

The Department of Education (Department) proposes to terminate an emergency adoption of a temporary modification to specific rules in N.J.A.C. 6A:14, Special Education. In response to the COVID-19 pandemic, section 6 of Executive Order (EO) 103 (Murphy) (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 May, 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 proposes to terminate 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.

Upon State Board of Education approval, the termination will be effective immediately.

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 to 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.

Full text of the rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Subchapter 1. General Provisions

6A:14-1.1 General requirements

(a)-(c) (No change.)

(d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 which shall:

1. – 2. (No change.)

3. Be located in facilities that are accessible to the disabled; **and**

4. Meet all requirements of this chapter[; and].

[5. 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.]