

State of New Jersey
Department of Education
Notice of Rule Waiver/Modification/Suspension
Pursuant to Executive Order No. 103 (Murphy) (March 9, 2020)
Covid-19 State Of Emergency

Temporary Rule: **Modification of N.J.A.C. 6A:14, Special Education, adopted by State Board of Education, Department of Education**

Date: **April 1, 2020**

Authority: N.J.S.A. App.A:9-45 & App. A:9-47 ; Executive Order No. 103 (Murphy) (“EO 103”)

Effective Date: **April 1, 2020**

Expiration Date: Concurrent with the end of EO 103

This is an emergency adoption of a temporary rule modification of rules governing the provision of special education and related services to students with disabilities pursuant to N.J.A.C. 6A:14-1.1 and N.J.A.C. 6A:14-3.9. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes 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, Department of Education is modifying its rules as follows:

Currently, Department regulations do not permit school districts or other educational agencies to deliver related services to students with disabilities through the use of electronic communications, virtual, remote or other online platforms. Without this increased flexibility, students with disabilities will not receive the special education and related services they are entitled to as determined by each student’s individualized education program (IEP). During an extended public health-related school closure, district boards of education; charter schools; renaissance schools; the State agency or other public education agency that acts as the school district of residence for the location, identification, evaluation, determination of eligibility, development of an individualized education program, and the provision of a free appropriate public education to students with disabilities; receiving schools defined by N.J.A.C. 6A:14-7.1(a); and Department-approved clinics and agencies as defined by N.J.A.C. 6A:14-5.2 shall ensure students with disabilities are provided the same educational opportunities provided to their nondisabled peers through electronic communications, virtual, remote, or other online platforms, as appropriate.

The opportunities provided to students with disabilities shall be consistent with the student’s IEP to the greatest extent possible. Further, during an extended public health-related school closure, related services to students with disabilities shall be provided through electronic communications, virtual, remote, or other online platforms, as appropriate and as required by the student’s IEP to the greatest extent possible.

Allowing the use of electronic communications, virtual, remote, or other online platforms ensures students with disabilities are provided the services they are entitled to, as set forth by a student's individualized education program (IEP), during extended school closures. Modifying the rules governing the delivery of special education and related services to students with disabilities to allow for the services to be provided through electronic communications, remote, virtual, or other online platforms ensures school districts and educational agencies are 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.

I find that the modification of the rules above are necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

Date

Lamont O. Repollet, Ed.D.
Commissioner
Department Of Education