



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
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**First Discussion**  
**July 9, 2014**

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*Acting Commissioner*

TO: Members, State Board of Education

FROM: David C. Hespe  
Acting Commissioner

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

AUTHORITY: N.J.S.A. 18A:4-15 and 18A:46-1, U.S.P.L. 93-112, Sec. 504. 94-142, 99-457, 101-476, 105-17,108-446, and 34 CFR 300.1 et seq.

REASON  
FOR ACTION: Amendments

SUNSET DATE: June 26, 2020

### **Summary**

The Department of Education (Department) proposes amendments to N.J.A.C. 6A:14, Special Education. The chapter sets forth the rules for the provision of a free, appropriate public education to students with disabilities, including all substantive and procedural safeguards afforded by State and Federal law. The chapter is intended to ensure students' education is of appropriate quality and affords them meaningful and significant benefits. The chapter impacts to varying degrees upon students with disabilities and all public and private schools that educate students with disabilities.

N.J.A.C. 6A:14 was adopted effective July 6, 1998, as part of a comprehensive review after the revision in 1997 of the controlling Federal law, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. The chapter was readopted with technical amendments effective June 26, 2013. The chapter is scheduled to expire June 26, 2020.

The proposed amendments to Chapter 14 will bring New Jersey's special education regulations into conformance with the IDEA and its implementing regulations, which the State is required to do as a condition of receipt of IDEA Part B grant funds. The amendments also will implement new State laws -- P.L. 2013, c.19 and P.L. 2013, c.131 -- and new Federal regulations and laws -- 34 CFR 300.154(d), 34 CFR 300.504, 34 CFR 300.502(a)(b)(5), Federal law Pub. L. 111-256, 34 CFR 300.8(b) and 300.11(b).

The following summarizes the proposed amendments:

## **Subchapter 1. General Provisions**

### **N.J.A.C. 6A:14-1.2 District eligibility for assistance under IDEA Part B**

This section sets forth the criteria for school district eligibility for fiscal assistance under IDEA Part B. Each district board of education and State agency program that acts as a district board of education is eligible for financial assistance under IDEA Part B for a fiscal year by having a special education plan that meets the required criteria.

The Department proposes N.J.A.C. 6A:14-1.2(b)19 to require school districts to develop a plan to establish stability in special education programming. The plan must take into account the consistency of the location, curriculum, and staffing in the provision of special education programs and services for students. The proposed rule will align the chapter with State law P.L. 2013, c.19, which requires the State Board to promulgate regulations requiring school districts to develop a plan to establish stability in special education programming.

The Department proposes to amend N.J.A.C. 6A:14-1.2(c) to replace “(b)1 through 14” with “(b)1 through 19” to ensure all the required assurances listed in N.J.A.C. 6A:14-1.2(b)1 through 18 are adhered to by school districts as required by the IDEA and to reflect proposed N.J.A.C. 6A:14-1.2(b)19.

### **N.J.A.C. 6A:14-1.3 Definitions**

This section provides definitions of words and terms found throughout N.J.A.C. 6A:14.

The Department proposes a definition for “dyslexia.” P.L. 2013, c.131 requires the State Board to adopt the International Dyslexia Association’s definition of dyslexia as part of Chapter 14.

## **Subchapter 2. Procedural Safeguards**

### **N.J.A.C. 6A:14-2.3 Parental consent, notice, participation and meetings**

This section identifies the situations when parental consent must be obtained by a school district. It also describes the procedures that must be followed in situations when a parent refuses to provide consent or revokes parental consent. The section also describes the requirements regarding written notice when a school district proposes to initiate or change, or declines to initiate or change, the identification, classification, evaluation, or educational placement of a student or the provision of a free, appropriate public education, and school district responsibilities when responding to written parental requests. In addition, the section lists the required participants in eligibility and individualized education program (IEP) team meetings, as well as the required procedures for scheduling and conducting IEP team meetings.

The Department proposes new N.J.A.C. 6A:14-2.3(a)6 to include public assistance as an additional instance when parental consent must be obtained. In accordance with regulations recently issued by the United States Department of Education, 34 § CFR 300.154(d), a one-time consent must be obtained prior to accessing for the first time a child's or parent's public benefits or insurance. The Department also proposes to recodify current N.J.A.C. 6A:14-2.3(a)6 through 8 as (a)7 through 9, respectively.

The Department proposes N.J.A.C. 6A:14-2.3(g)7iii and iv to include two additional instances when a school district must provide to parents a copy of the procedural safeguards

statement. A copy of the procedural safeguards statement must be provided when a request for a complaint investigation is submitted to the Department and when a student is removed for disciplinary reasons and the removal constitutes a change in placement as described in N.J.A.C. 6A:14-2.8. The proposed new rules are required to align with the Federal requirements set forth at 34 § CFR 300.504.

### **N.J.A.C. 6A:14-2.5 Protection in evaluation procedures**

This section describes the procedures for conducting evaluations to determine a student's eligibility for special education and related services, including required methodology, and a school district's response to parental requests for independent evaluations.

The Department proposes an amendment to N.J.A.C. 6A:14-2.5(c), which currently describes the process for obtaining an independent evaluation, to add "upon completion of an initial evaluation or reevaluation" to stipulate when the parent can request the independent evaluation and to remove "any assessment conducted as part of." The proposed amendment also will add language allowing a parent to obtain only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees, and requiring the parent to specify what assessment(s) is sought as part of the request for an independent evaluation. The proposed amendment will align the rule with Federal requirements.

The Department proposes to delete N.J.A.C. 6A:14-2.5(c)1 and 1i through iv, which allow a school district to conduct assessments prior to an independent evaluator's assessment. The current rules conflict with Federal regulations and cause additional expense for school districts without improving the process.

The Department proposes to recodify N.J.A.C. 6A:14-2.5(c)2 through 8 as (c)1 through 7, respectively.

The Department also proposes an amendment to the recodified N.J.A.C. 6A:14-2.5(c)1i to accurately reflect "(c)2 and 3 below" instead of "(c)3 and (4)" and to delete "except as provided in (c)1 above" since current N.J.A.C. 6A:14-2.5(c)1 is proposed for deletion.

## **Subchapter 3. Services**

### **N.J.A.C. 6A:14-3.5 Determination of eligibility for special education and related services**

This section describes the procedures for determining eligibility for special education and related services and defines the eligibility categories.

The Department proposes an amendment to N.J.A.C. 6A:14-3.5(c)3 and 3i through iii to replace "cognitively impaired" and "cognitive impairment" with "intellectually disabled" and "intellectual disability" respectively. The Department also proposes at N.J.A.C. 6A:14-3.5(c)3 and 3i through iii to delete "corresponds to 'mentally retarded' and," "corresponds to 'educable' and," "corresponds to 'trainable' and," and "corresponds to 'eligible for day training' and," respectively. The proposed amendments will align the chapter with the Federal law Pub. L. 111-256, Rosa's Law, which removed references to "mental retardation" from the IDEA and replaced it with "intellectual disabilities."

The Department proposes to recodify part of N.J.A.C. 6A:14-3.5(c)10 as N.J.A.C. 6A:14-3.5(c)10i to restructure the rule and allow for the addition of proposed N.J.A.C. 6A:14-

3.5(c)10ii. The Department also proposes to recodify current N.J.A.C. 6A:14-3.5(c)10i through v as (c)10i(1) through (5), respectively, and to replace “Cognitive” with “Intellectual” at recodified N.J.A.C. 6A:14-3.5(c)10i(2) to align with the Federal law Pub. L. 111-256, Rosa’s Law.

The Department proposes N.J.A.C. 6A:14-3.5(c)10ii to include as a preschool child with a disability a child between the ages of three and five who has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services. The proposed rule will align State regulations regarding preschool children with disabilities with the Federal requirements at 34 C.F.R. 3008(b) and 300.11(b).

### **N.J.A.C. 6A:14-3.7 Individualized education program**

This section describes the required sections of an IEP and the procedures for developing and revising student IEPs.

The Department proposes N.J.A.C. 6A:14-3.7(c)4 to require IEP teams to consider the consistency of the location of services when developing student IEPs. The proposed rule is required by P.L. 2013, c.19, which directed the State Board to require school districts to consider, among other factors, the consistency of the location, curriculum, and staffing in the provision of services when developing IEPs for students who are prone to regression due to frequent changes in location.

The Department also proposes to recodify N.J.A.C. 6A:14-3.7(c)4 through 11 as 5 through 12, respectively.

The Department proposes to amend N.J.A.C. 6A:14-3.7(f) to replace “(e)1 through 7” with “(e)1 through 8” to include all IEP components that must be included when developing an IEP for a student classified as eligible for speech-language services.

## **Subchapter 4. Programs and Instruction**

### **N.J.A.C. 6A:14-4.1 General requirements**

This section describes the general requirements for providing educational programs and related services for students with disabilities.

The Department proposes to delete N.J.A.C. 6A:14-4.1(l)1, which stipulated the effective date of the requirements for instructional time specified in N.J.A.C. 6A:14-4.1(l), because the rule was applicable starting with the 2007-2008 school year and, therefore, is no longer necessary.

### **N.J.A.C. 6A:14-4.6 Program criteria: supplementary instruction and resource**

This section describes the supplementary instruction and resource programs that may be provided to students with disabilities through an IEP.

The Department proposes to delete N.J.A.C. 6A:14-4.6(k)1, which stipulated the effective date of the requirements at N.J.A.C. 6A:14-4.6(k) regarding year spans for single-subject pull-out resource programs, because it was applicable starting with the 2007-2008 school year and, therefore, is no longer necessary.

## **N.J.A.C. 6A:14-4.7 Program criteria: special class programs, secondary programs and vocational rehabilitation**

This section describes special class programs, secondary programs and vocational rehabilitation programs available through an IEP to students with a disability.

The Department proposes an amendment to N.J.A.C. 6A:14-4.7(a)2 to change the class age range for special class programs at the elementary level from three years to four years. The amendment will align the rule with a July 26, 2007, Council on Local Mandates decision that required the age range at the elementary level to remain at four years.

The Department proposes to delete N.J.A.C. 6A:14-4.7(a)2i, which stipulated the effective date of N.J.A.C. 6A:14-4.7(a)2, because it was applicable starting with the 2007-2008 school year and, therefore, is no longer necessary.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is exempt from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments apply to the provision of special education services to all students with disabilities within the State. The proposed amendments will have an impact on individuals who administer and provide services, as well as the students who receive the services and their parents.

The purpose of the proposed amendments is to implement current Federal and State mandates and to reduce unnecessary burdens. The proposed amendments are necessary to continue the framework for the implementation of the mandates established when N.J.A.C. 6A:14 was originally adopted. Absent the rules as proposed for amendment, procedures for implementation could vary considerably from school district to school district. The consistency in Statewide rules rather than school district to school district procedures is a benefit to students with educational disabilities and their parents.

The proposed amendments will provide students with disabilities, parents, school district officials, and the general public concise rules governing all aspects of the provision of special education and related services to students with disabilities. The rules proposed for amendment govern all aspects of the provision of a free, appropriate public education to students with disabilities, and provide all affected persons and entities necessary guidance to obtain or provide students with disabilities the free, appropriate public education guaranteed them by State and Federal law. The proposed amendments include provisions governing consent, evaluation, determination of eligibility, development of IEPs, and provision of programs and services.

The proposed amendments will ensure compliance with State and Federal rules and regulations and will provide a positive social impact for students with disabilities while in school and in their adult life.

### **Economic Impact**

Special education is funded through Federal, State, and local monies. Local monies are raised by school districts through property taxes to pay for the education of nondisabled students and students with disabilities. School districts that meet eligibility requirements receive State aid that may be utilized for all students, including students with disabilities. School districts also

receive State aid for special education. In addition, school districts receive IDEA Part B and preschool monies. Fund expenditure is governed by IDEA and its implementing regulations, as well as State law.

N.J.A.C. 6A:14 incorporated Federal and State requirements since its initial adoption effective July 6, 1998. There should be no additional expenses associated with the proposed amendments, as they will ensure alignment with State and Federal rules and regulations and do not grant new entitlements or impose additional responsibilities on the regulated community beyond those currently in place and funded through the sources included above. There also should be no additional economic impact on the Department or other State agencies.

### **Federal Standards Statement**

The proposed amendments will not be inconsistent with or exceed Federal requirements or standards. The proposed amendments will make the rules consistent with Federal regulations.

### **Jobs Impact**

The Department does not anticipate the proposed amendments will result in the creation or reduction of jobs in the State.

### **Agriculture Industry Impact**

The Department does not anticipate the proposed amendments will have an impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments will apply to public schools, approved private schools for students with disabilities, clinics, and agencies. Approved private schools for students with disabilities, clinics, and agencies could be considered small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The number of approved private schools, clinics, and agencies to which the rules apply is approximately 175 private schools for students with disabilities and 155 clinics and agencies. The regulatory requirements pertaining to approved private schools for students with disabilities and clinics reflect the minimal amount of paperwork and recordkeeping appropriate to strike a balance between the need to assure services are provided in an appropriate manner, and the desire to minimize the burden on small businesses. No professional services should be necessary to comply with the regulatory requirements as proposed with amendments. There are no capital costs and minimal or no compliance costs associated with the proposed amendments. There should be no adverse economic impact on small businesses as a result of the proposed amendments.

### **Housing Affordability Impact Analysis**

The proposed amendments will not impact on the average cost of housing. The proposed amendments concern special education and related services.

### **Smart Growth Development Impact Analysis**

The proposed amendments will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan. The proposed amendments concern special education and related services.

**Full text** of the proposed amendments follows (additions indicated bolded **thus**; deletions indicated in brackets [thus]):

**N.J.A.C. 6A:14, SPECIAL EDUCATION**

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## CHAPTER 14. SPECIAL EDUCATION

### SUBCHAPTER 1. GENERAL PROVISIONS

#### **6A:14-1.2 District eligibility for assistance under IDEA Part B**

- (a) For the purposes of this section, each district board of education and State agency program that acts as a district board of education is eligible for assistance under IDEA Part B for a fiscal year by having a special education plan that demonstrates to the satisfaction of the Department of Education through the county office of education that it meets the conditions of (b) through (f) below.
1. If a district board of education has on file with the Department of Education through the county office of education a plan consisting of policies and procedures that have been approved by the county office of education, including policies and procedures approved under Part B of the IDEA as in effect before December 3, 2004, the district board of education shall be considered to have met the requirements for receiving assistance under Part B.
  2. Amendments to policies, procedures and programs shall be made according to the following:
    - i. The approved policies, procedures and programs submitted by a district board of education shall remain in effect until the county office approves such amendments as the district board of education deems necessary; or
    - ii. If the provisions of the IDEA Amendments of 2004 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education

through the county offices shall require the LEA to modify its policies, procedures and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

(b) Each district board of education shall have policies, procedures and programs approved by the Department of Education through the county office of education that are in effect to ensure the following:

1. A free appropriate public education according to N.J.A.C. 6A:14-1.1(b)1 is available to all students with disabilities between the ages of three and 21, including students with disabilities that have been suspended or expelled from school;
2. Full educational opportunity to all students with disabilities is provided;
3. All students with disabilities, who are in need of special education and related services, including students with disabilities attending nonpublic schools, regardless of the severity of their disabilities, are located, identified and evaluated according to N.J.A.C. 6A:14-3.3;
4. Homeless students are located, identified and evaluated and provided special education and related services in accordance with the IDEA, including the appointment of a surrogate parent for unaccompanied homeless youths as defined in 42 U.S.C. §§ 11431 et seq.;
5. An individualized education program is developed, reviewed and as appropriate, revised according to N.J.A.C. 6A:14-3.6 and 3.7;
6. To the maximum extent appropriate students with disabilities are educated in the least restrictive environment according to N.J.A.C. 6A:14-4.2;
7. Students with disabilities are afforded the procedural safeguards required by N.J.A.C. 6A:14-2;
8. Students with disabilities are evaluated according to N.J.A.C. 6A:14-2.5 and 3.4;

9. The compilation, maintenance, access to and confidentiality of student records are in accordance with N.J.A.C. 6A:32;
10. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and that by the student's third birthday an individualized education program has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);
11. Provision is made for the participation of students with disabilities who are placed by their parents in nonpublic schools according to N.J.A.C. 6A:14-6.1 and 6.2;
12. Students with disabilities who are placed in private schools by the district board of education, are provided special education and related services at no cost to their parents;
13. All personnel serving students with disabilities are highly qualified and appropriately certified and licensed, where a license is required, in accordance with State and Federal law;
14. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided;
  - i. The district board of education shall maintain information to demonstrate its efforts to:
    - (1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities;
    - (2) Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with

- disabilities that impedes the learning of students with disabilities and others;
- (3) Acquire and disseminate to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources and how the district will, if appropriate, adopt promising practices, materials and technology;
  - (4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and
  - (5) Provide for joint training activities of parents and special education, related services and general education personnel;
15. Students with disabilities are included in all Statewide and districtwide assessment programs, with appropriate accommodations, where necessary;
16. Instructional materials will be provided to blind or print-disabled students in a timely manner, consistent with a plan developed by the district;
17. For students with disabilities who are potentially eligible to receive services from the Division of Developmental Disabilities in the Department of Human Services, the district will provide, pursuant to the Developmentally Disabled Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to the parent to apply for such services; and
18. When the school district utilizes electronic mail, parents are informed as to whether they may use electronic mail to submit requests to school officials regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education. If this is permitted,

parents shall be informed of the procedures to access the electronic mail system.

**19. A plan is in effect to establish stability in special education programming. The plan shall take into account the consistency of the location, curriculum, and staffing in the provision of special education services in accordance with P.L. 2013, c.19.**

- (c) Each district board of education shall provide written assurance of its compliance with the requirements of (b)1 through [14] 19 above.
- (d) Annually, each district board of education shall describe, in accordance with instructions from the Department of Education, how it will use the funds under Part B of the IDEA during the next school year.
- (e) Annually, each district board of education shall submit:
  - 1. A report of the numbers of students with disabilities according to their Federal disability category, age, racial-ethnic background, and placement;
  - 2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to students with disabilities and the full-time equivalence of their assignments and relevant information on current and anticipated personnel vacancies and shortages; and
  - 3. Any additional data reports as required by the Department of Education to comply with the IDEA (20 U.S.C. §1400 et seq.) including, but not limited to, the number of students with disabilities who are:
    - i. Exiting education;
    - ii. Subject to suspensions and expulsions;
    - iii. Removed to interim alternative education settings;

- iv. Participating in Statewide assessments;
  - v. Postsecondary transition outcomes; and
  - vi. Preschool outcomes.
- (f) Upon request, reports in addition to those under (e) above shall be submitted to the Department of Education including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated and newly classified.
- (g) The district board of education shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the district board of education, or LEA under Part B of the IDEA.
- (h) Each district board of education shall ensure that a special education parent advisory group is in place in the district to provide input to the district on issues concerning students with disabilities.

### **6A:14-1.3 Definitions**

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§ 1400 et seq.) and its implementing regulations at 34 CFR §§ 300.1 et seq., which terms are incorporated by reference herein.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

"Adult student" means a person who has attained age 18, who is not under legal guardianship and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Approved private school for students with disabilities" corresponds to "approved private school for the handicapped" and means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

"Assistive technology device" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§ 300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix F.

"Assistive technology service" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, at 34 CFR §§ 300.1 et seq., as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix G.

"Consent" means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;

2. Understands and agrees in writing to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
3. Understands that the granting of consent is voluntary and may be revoked at any time; and
4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

“Custody” means that a child has been removed by the State agency empowered to do so from the care of his or her parent(s) and the right of the parent(s) to make educational decisions on behalf of the child has been terminated by a court of appropriate jurisdiction.

"Department of Education" means the New Jersey Department of Education.

"District board of education" means the school district of residence, the board of trustees of a charter school, the State agency or other public education agency which acts as the 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 except as defined otherwise.

**“Dyslexia” means a specific learning disability that is neurological in origin. It can be characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. Difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may**

**include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.**

"Early childhood program" means a general education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by a governmental agency.

"Extended school year services" means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student's IEP at no cost to the parent.

"General Statewide assessment" means a Statewide assessment given to all students of a particular grade level except for those students with disabilities whose IEP specifies that they will participate in the alternate proficiency assessment.

"Individualized education program" (IEP) means a written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student's educational placement, serve as the basis for program implementation and comply with the mandates set forth in this chapter.

"IEP team" means the group of individuals who are responsible for the development, review and revision of the student's individualized education program. The members of the IEP team are listed at N.J.A.C. 6A:14-2.3(k)2.

"Native language" means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the native language is the language normally used by the parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine the language of the student.

"Nonpublic school" means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades in which a student age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Nonpublic school student" means any student who is enrolled full time in a nonpublic school. A student who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent resides.

"Parent" means the natural or adoptive parent, the legal guardian, foster parent when willing to so serve, a surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (i), a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term "parent" shall include the adult student as defined above.

"Referral" means the written request for an initial evaluation to determine whether a student is eligible for services under this chapter.

"Related services" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix B.

"Special education" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix C.

"Speech-language specialist" means a speech correctionist or speech-language specialist.

"Student" means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Student age" means the school age of a student as defined by the following:

1. "Age three" means the attainment of the third birthday. Children with disabilities attaining age three shall have a free, appropriate public education available to them provided by the district board of education.
2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cutoff date by the district board of education. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided preschool services for the balance of that school year.
3. "Age 21" means the attainment of the 21st birthday by June 30 of that school year. Students with disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Student with a disability" means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

"Transition services" for students age 16 or older, is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, as amended and supplemented, incorporated by reference herein and reproduced at chapter Appendix D. For students under age 16, transition services is defined as set forth in N.J.A.C. 6A:14-3.7(e)11.

"Ward of the State" means a student who, pursuant to an order of a court of competent jurisdiction, is under the guardianship of an agency of the State, is a foster child for whom the foster parent is not the student's parent or is a student who, pursuant to an order of a court of competent jurisdiction, is in the custody of the State child welfare agency.

## **SUBCHAPTER 2. PROCEDURAL SAFEGUARDS**

### **6A:14-2.3 Parental consent, notice, participation and meetings**

- (a) Consent shall be obtained:
1. Prior to conducting any assessment as part of an initial evaluation;
  2. Prior to implementation of the initial IEP resulting from (a)1 above;
  3. Prior to conducting any assessment as part of a reevaluation, except that such consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond;
  4. Prior to the release of student records according to N.J.A.C. 6A:32;

5. Each time a district board of education seeks to access private insurance covering a student with a disability.
6. **Prior to the first time a district board of education seeks to access a child's or parent's public benefits or insurance covering a student with a disability in accordance with 34 §CFR 154(d);**

[6]7. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;

[7]8. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and

[8]9. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).

- (b) For a ward of the State, a district board of education must make reasonable efforts to obtain parental consent for an initial evaluation. If, after reasonable efforts, the parent cannot be found, or parental rights have been terminated, or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed, parental consent need not be obtained for an initial evaluation.
- (c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. For those areas set forth in (a)1, 3

and 4 above, if a parent refuses to provide consent and the district and the parent have not agreed to other action, the district may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.

- (d) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.
- (e) Written consent may be revoked by the parent, in writing, at any time.
  - 1. Revocation of consent shall not be retroactive, and such revocation shall not negate any action that occurred after consent was provided and before consent was revoked.
  - 2. If consent for special education and related services is revoked by the parent, the district board of education shall not file for a due process hearing or otherwise institute any legal proceeding seeking to overturn the parent's determination.
  - 3. When a parent revokes consent for special education and related services, the school district shall provide written notice to the parent within 10 days of receipt of the written revocation of consent. The school district shall cease providing special education and related services to the student after the expiration of the 15-calendar-day notice period unless the parent rescinds the revocation of consent, in writing, within that time period.
  - 4. If a parent revokes consent for special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents revoked consent for implementation of services.

(f) Written notice which meets the requirements of this section shall be provided to the parent when a district board of education:

1. Proposes to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student; or
2. Declines to initiate or change the identification, classification, evaluation, educational placement of the student or the provision of a free, appropriate public education to the student.

(g) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:

1. A description of the action proposed or denied by the district board of education;
2. An explanation of why it is taking such action;
3. A description of any options the district board of education considered and the reasons why those options were rejected;
4. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action;
5. A description of any other factors that are relevant to the proposal or refusal by the district board of education;
6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and
7. In addition, a copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the

procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:

- i. Upon referral for an initial evaluation;
- ii. Upon request by a parent; and
- iii. When a request for a due process hearing is submitted to the Department of Education.
- iv. When a request for a complaint investigation is submitted to the Department; and**
- v. When a student is removed for disciplinary reasons and the removal constitutes a change in placement as described in N.J.A.C. 6A:14-2.8.**

(h) Written notice according to (g) above shall be provided to the parent as follows:

1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;
2. The district of board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;
3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:
  - i. The parent disagrees with the proposed action and the district takes action in an attempt to resolve the disagreement; or
  - ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).

4. The district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the school district determine that disciplinary action requires immediate implementation. Such written notice shall be provided according to the following:
  - i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (g) above.  
  
Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.
  - ii. During the pendency of mediation or due process related to the disciplinary action the student shall be placed in accordance with 20 U.S.C. § 1415(k) and N.J.A.C. 6A:14-2.8.
5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding school holidays but not summer vacation.
  - i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted and a determination made within 20 calendar days, excluding school holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.
- (i) When a determination is made to conduct or not to conduct an initial evaluation, in addition to the notice required in (g) above, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14), and due process hearing rules (N.J.A.C. 1:6A).

- (j) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, educational placement of, or the provision of a free, appropriate public education to the student.
- (k) Meetings to determine eligibility and develop an IEP shall, if feasible, be combined as long as the requirements for notice of a meeting according to (g)7ii above and (k)3 through 5 below are met.
1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:
    - i. The parent;
    - ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the student's educational performance, a teacher who is knowledgeable about the district's programs;
    - iii. The student, where appropriate;
    - iv. At least one child study team member who participated in the evaluation;
    - v. The case manager;
    - vi. Other appropriate individuals at the discretion of the parent or school district; and
    - vii. For an initial eligibility meeting, certified school personnel referring the student as potentially having a disability, or the school principal or designee if they choose to participate.
  2. Meetings of the IEP team shall include the following participants:
    - i. The parent;
    - ii. Not less than one general education teacher of the student, if the student is or may be participating in the general education classroom;

- (1) If the student has no general education teacher, a general education teacher who is knowledgeable about the district's programs shall participate;
  - (2) The general education teacher as a member of the IEP team must, to the extent appropriate, participate in the development, review, and revision of the student's IEP;
  - (3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
  - (4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications or supports for school personnel that will be provided for the student;
- iii. Not less than one special education teacher of the student or, where appropriate, not less than one special education provider of the student;
- (1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the district's programs shall participate;
- iv. At least one child study team member who can interpret the instructional implications of evaluation results;
- v. The case manager;
- vi. A representative of the responsible district who:
- (1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
  - (2) Is knowledgeable about the general education curriculum;

- (3) Is knowledgeable about the availability of resources of the district board of education; and
    - (4) Shall be the child study team member or other appropriate school personnel including the special education administrator or principal;
  - vii. At the discretion of the parent or school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
    - (1) The determination of the special knowledge or expertise shall be made by the party (parent or school district) who invited the individual;
  - viii. The student where appropriate;
  - ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and
  - x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.
3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.
  4. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent(s) shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.
  5. Notice of meetings shall indicate the purpose, time, location and participants.

- i. The notice of an IEP meeting shall inform the parents of the provisions in (k)2vii and (k)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.
  - ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:
    - (1) A purpose of the meeting will be the development of the transition services of the student; and
    - (2) The school district will invite the student;
  - iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:
    - (1) Indicate that a purpose of the meeting is the consideration of transition services for the student;
    - (2) Indicate that the school will invite the student; and
    - (3) Identify any other agency that will be invited to send a representative.
6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.
7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The school shall maintain a record of its attempts to arrange the meeting, including, but not limited to:

- i. Detailed records of telephone calls made or attempted and the results of those calls;
  - ii. Copies of correspondence sent to the parents and any responses received; and
  - iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.
9. For a member of the IEP team whose area of the curriculum or related services is not being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
  - i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
10. For a member of the IEP team whose area of the curriculum or related services is being modified or discussed, such IEP team member may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
  - i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the

parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.

- ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

(l) The following activities shall not be considered a meeting that requires parental participation:

1. Informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and
2. Preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.

1. An adult student shall be given notice and shall participate in meetings according to (a) through (k) above. The district board of education or the adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the adult student.

2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for release of records of an adult student shall be obtained from the adult student.
  3. The district board of education shall provide any notice required under this chapter to the adult student and the parent.
  4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.
- (n) The New Jersey Department of Education shall disseminate the procedural safeguards statement to parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies.

#### **6A:14-2.5 Protection in evaluation procedures**

- (a) In conducting an evaluation, each district board of education shall:
1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:
    - i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and
    - ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities to participate in appropriate activities;

2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and
  3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (b) Each district board of education shall ensure:
1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:
    - i. Are selected and administered so as not to be racially or culturally discriminatory; and
    - ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so; and
    - iii. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills;
  2. Any standardized tests that are administered:
    - i. Have been validated for the purpose(s) for which they are administered; and
    - ii. Are administered by certified personnel trained in conformance with the instructions provided by their producer;
  3. The student is assessed in all areas of suspected disability;
  4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;

5. Tests are selected, administered and interpreted so that when a student has sensory, manual or communication impairments, the results accurately reflect the ability which that procedure purports to measure, rather than the impairment unless that is the intended purpose of the testing;
6. The evaluation is conducted by a multi-disciplinary team of professionals consisting of a minimum of two members of the child study team, and, where appropriate, other specialists who shall conduct the evaluation in accordance with the procedures in N.J.A.C. 6A:14-3. A minimum of one evaluator shall be knowledgeable in the area of the suspected disability; and
7. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category.

(c) **[A] Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with [any assessment conducted as part of an] the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request.**

[1. If a parent seeks an independent evaluation in an area not assessed as part of an initial evaluation or a reevaluation, the school district shall first have the opportunity to conduct the requested evaluation.

- i. The school district shall determine within ten days of receipt of the request for an independent evaluation whether or not to conduct an evaluation pursuant to (c)1iii and iv below, and notify the parent of its determination.

- ii. If the school district determines to conduct the evaluation, it shall notify the parent in writing and complete the evaluation within 45 calendar days of the date of the parent's request.
- iii. If the school district determines not to conduct the evaluation first, it shall proceed in accordance with (c)2 below.
- iv. After receipt of the school district's evaluation, or the expiration of the 45 calendar day period in which to complete the evaluation, the parent may then request an independent evaluation if the parent disagrees with the evaluation conducted by the school district.]

[2.] 1. Such independent evaluation(s) shall be provided at no cost to the parent unless the school district initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.

- i. Upon receipt of the parental request, the school district shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to [(c)3] (c)2 and [4] 3 below. In addition, [except as provided in (c)1 above,] the school district shall take steps to ensure that the independent evaluation is provided without undue delay; or
- ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the school district shall request the due process hearing.

[3.] 2. Any independent evaluation purchased at public expense shall:

- i. Be conducted according to N.J.A.C. 6A:14-3.4; and
- ii. Be obtained from another public school district, educational services commission, jointure commission, a clinic or agency approved under

N.J.A.C. 6A:14-5, or private practitioner, who is appropriately certified and/or licensed, where a license is required.

[4.] 3. An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).

[5.] 4. Any independent evaluation submitted to the district, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.

[6.] 5. If a parent requests an independent evaluation, the school district may ask the parent to explain why he or she objects to the school district's evaluation. However, the school district shall not require such an explanation and the school district shall not delay either providing the independent evaluation or initiating a due process hearing to defend the school district's evaluation.

[7.] 6. For any independent evaluation, whether purchased at public or private expense, the school district shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.

[8.] 7. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

### **SUBCHAPTER 3. SERVICES**

#### **6A:14-3.5 Determination of eligibility for special education and related services**

- (a) When an initial evaluation is completed for a student age three through 21, a meeting according to N.J.A.C. 6A:14-2.3(k)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation and information that will be used for a determination of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described in N.J.A.C. 6A:14-2.3(k)1.
- (b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading, including the essential components of reading instruction, or math or due to limited English proficiency.
- (c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below; the disability adversely affects the student's educational performance and the student is in need of special education and related services. Classification shall be based on all assessments conducted including assessment by child study team members and assessment by other specialists as specified below.
1. "Audiarily impaired" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Audiarily impaired" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

- i. "Deafness"--The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification and the student's educational performance is adversely affected.
  - ii. "Hearing impairment"--An impairment in hearing, whether permanent or fluctuating which adversely affects the student's educational performance.
2. "Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.
3. "[Cognitively impaired] **Intellectually disabled**" [corresponds to "mentally retarded" and] means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:
  - i. "Mild [cognitive impairment] **intellectual disability**" [corresponds to "educable" and] means a level of cognitive development and adaptive

behavior in home, school and community settings that are mildly below age expectations with respect to all of the following:

- (1) The quality and rate of learning;
- (2) The use of symbols for the interpretation of information and the solution of problems; and
- (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate [cognitive impairment] **intellectual disability**" [corresponds to "trainable" and] means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

- (1) The ability to use symbols in the solution of problems of low complexity;
- (2) The ability to function socially without direct and close supervision in home, school and community settings; and
- (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe [cognitive impairment] **intellectual disability**" corresponds to "eligible for day training" and means a level of functioning severely below age expectations whereby in a consistent basis the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impaired" corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or

pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.

- i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.
  - ii. When the area of suspected disability is a disorder of articulation, voice or fluency, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).
5. "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:
- i. An inability to learn that cannot be explained by intellectual, sensory or health factors;
  - ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - iii. Inappropriate types of behaviors or feelings under normal circumstances;

- iv. A general pervasive mood of unhappiness or depression; or
  - v. A tendency to develop physical symptoms or fears associated with personal or school problems.
6. "Multiply disabled" corresponds to "multiply handicapped" and "multiple disabilities," and means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities includes cognitively impaired-blindness, cognitively impaired-orthopedic impairment, etc. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiply disabled. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiply disabled." Multiply disabled does not include deaf-blindness.
7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
8. "Orthopedically impaired" corresponds to "orthopedically handicapped" and means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes malformation, malfunction or loss of bones, muscle or tissue. A medical assessment documenting the orthopedic condition is required.
9. "Other health impaired" corresponds to "chronically ill" and means a disability characterized by having limited strength, vitality or alertness, including a heightened alertness with respect to the educational environment, due to chronic

or acute health problems, such as attention deficit disorder or attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

10. "Preschool child with a disability" corresponds to preschool handicapped and means a child between the ages of three and five **who either:**
  - i. **Is** experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the **following** areas in (c)10i(1) through [v] (5) below, and requires special education and related services. When utilizing a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.
    - [i.] (1) Physical, including gross motor, fine motor and sensory (vision and hearing);
    - [ii.] (2) [Cognitive] **Intellectual**;
    - [iii.] (3) Communication;
    - [iv.] (4) Social and emotional; and
    - [v.] (5) Adaptive[.] ; **or**
  - ii. **Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.**
11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the

education of the student or other students and is not due to emotional disturbance as defined in (c)5 above.

12. "Specific learning disability" corresponds to "perceptually impaired" and means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
  - i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:
    - (1) Basic reading skills;
    - (2) Reading comprehension;
    - (3) Oral expression;
    - (4) Listening comprehension;
    - (5) Mathematical calculation;
    - (6) Mathematical problem solving;
    - (7) Written expression; and
    - (8) Reading fluency.
  - ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.
  - iii. The term severe discrepancy does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general cognitive deficits, emotional disturbance or environmental, cultural or economic disadvantage.

- iv. The district shall, if it utilizes the severe discrepancy methodology, adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.
- 13. "Traumatic brain injury" corresponds to "neurologically impaired" and means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
- 14. "Visually impaired" corresponds to "visually handicapped" and means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the Commission for the Blind and Visually Impaired.

**6A:14-3.7 Individualized education program**

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and such IEP shall be implemented as soon as possible following the IEP meeting.

1. At the beginning of each school year, the district board of education shall have in effect an IEP for every student who is receiving special education and related services from the district;
  2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
  3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and
  4. The district board of education shall ensure that there is no delay in implementing a student's IEP including any case in which the payment source for providing or paying for special education and related services is being determined.
- (b) The IEP shall be developed by the IEP team according to N.J.A.C. 6A:14- 2.3(k)2 for students classified eligible for special education and related services or according to N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.
- (c) When developing the IEP, the IEP team shall:
1. Consider the strengths of the student and the concerns of the parents for enhancing the education of their child;
  2. Consider the academic, developmental and functional needs of the student;
  3. Consider the results of the initial evaluation or most recent evaluation of the student and, as appropriate, the student's performance on any general State or districtwide assessment;

- 4. Consider the consistency of the location of the services for students who are prone to regression due to frequent changes in location;**
- [4.] **5.** In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior;
- [5.] **6.** In the case of a student with limited English proficiency, consider the language needs of the student as related to the IEP;
- [6.] **7.** In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, and current and projected needs for instruction in Braille that such instruction is not appropriate;
- [7.] **8.** Consider the communication needs of the student;
- [8.] **9.** In the case of a student who is deaf or hard of hearing consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of opportunities for direct instruction in the student's language and communication mode;
- [9.] **10.** Consider whether the student requires assistive technology devices and services.
- i. The district board of education shall ensure that assistive technology devices or assistive technology services, or both, as defined in the IDEA, are made available to a student with a disability if required as part of the student's special education, related services or supplementary aids and services.
  - ii. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team

determines that the student needs access to those devices in order to receive a free, appropriate public education;

[10] **11.** Beginning at age 14, or younger if determined appropriate by the IEP team, consider the need for consultation from the Division of Vocational Rehabilitation Services, Department of Labor and Workforce Development and other agencies providing services for individuals with disabilities; and

[11.] **12.** Review the preschool day to determine what accommodations and modifications may be required to allow the child to participate in the general education classroom and activities.

(d) The IEP may be amended without a meeting of the IEP team as follows:

1. The IEP may be amended if the parent makes a written request to the district board of education for a specific amendment to a provision or provisions of the IEP and the district agrees;
2. The school district provides the parent a written proposal to amend a provision or provisions of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;
3. All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the school district; and
4. If an IEP is amended pursuant to this subsection, such amendment shall not affect the requirement in (i) below that the IEP team review the IEP at a meeting annually, or more often if necessary.

(e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

1. A statement of the student's present levels of academic achievement and functional performance, including, but not limited to:
  - i. How the student's disability affects the student's involvement and progress in the general curriculum; or
  - ii. For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;
2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall, as appropriate, be related to the core curriculum content standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student specific, functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.
3. Such measurable annual goals shall include benchmarks or short-term objectives related to:
  - i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
  - ii. Meeting each of the student's other educational needs that result from the student's disability;
4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. Such special education and related services and supplementary aids and services shall be based, to the extent practicable, on peer reviewed research. A statement

of the program modifications or supports for school personnel that shall be provided for the student:

- i. To advance appropriately toward attaining the measurable annual academic and functional goals;
  - ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and
  - iii. To be educated and participate with other students with disabilities and nondisabled students;
5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting;
6. An explanation of the extent, if any, to which the student shall not participate with nondisabled students in the general education class and in extracurricular and nonacademic activities;
7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.
  - i. If the IEP team determines that the student shall not participate in a particular general Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student according to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student;
8. A statement which specifies the projected date for the beginning of the services and modifications described in (e)4 above, and the anticipated frequency, location, and duration of those services and modifications;

9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school graduation requirements, the statement shall include:
  - i. A rationale for the exemption or modification based on the student's educational needs which shall be consistent with N.J.A.C. 6A:14-4.11; and
  - ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State endorsed diploma.
10. A statement of student's transition from an elementary program to the secondary program which shall be determined by factors including number of years in school; social, academic and vocational development; and chronological age;
11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:
  - i. A statement of the student's strengths, interests and preferences;
  - ii. Identification of a course of study and related strategies and/or activities that:
    - (1) Are consistent with the student's strengths, interests, and preferences; and
    - (2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment and, if appropriate, independent living;
  - iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development; and

- iv. As appropriate, a statement of any needed interagency linkages and responsibilities;
12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of those elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living and the transition services including a course of study needed to assist the child in reaching those goals.
- i. The transition services as defined in IDEA shall consist of a coordinated set of activities for a student with a disability that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and be based on the individual student's needs, taking into account the student's strengths, preferences and interests. In addition to the above, transition services shall include:
    - (1) Instruction;
    - (2) Related services;
    - (3) Community experiences;
    - (4) The development of employment and other post-school adult living objectives; and

- (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;
13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education or public agency shall take other steps to ensure that the student's preferences and interests are considered;
  14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;
  15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;
  16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and
  17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with nondisabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.
- (f) The IEP for the student classified as eligible for speech-language services shall include (e)1 through [7] 8, 15 and 16 above. When appropriate, (e)11, 12, 13, and 14 above shall be included. The statement of the current academic and functional achievement in (e)1

above shall include a description of the student's status in speech-language performance and a description of how the student's disability affects the student's involvement and progress in the general curriculum. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.

- (g) If an agency other than the district board of education fails to provide the transition services included in the student's individualized education program, the district board of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.
- (h) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.
- (i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.
  - 1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.
  - 2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school program. The annual review shall include input from the staff of the secondary school.
- (j) The IEP team shall review:
  - 1. Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
  - 2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;

3. Information about the student including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;
  4. The student's anticipated needs; or
  5. Other relevant matters.
- (k) For those students in a separate setting, the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement.
- (l) Signatures of those persons who participated in the meeting to develop the IEP shall be maintained and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.
- (m) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3.

## **SUBCHAPTER 4. PROGRAMS AND INSTRUCTION**

### **6A:14-4.1 General requirements**

- (a) Each district board of education shall provide educational programs and related services for students with disabilities required by the individualized education programs of those students for whom the district board of education is responsible.

- (b) A district board of education proposal to establish or eliminate special education programs or services shall be approved by the Department of Education through its county offices.
- (c) The length of the school day and the academic year of programs for students with disabilities, including preschoolers with disabilities, shall be at least as long as that established for nondisabled students. The IEP team may, in its discretion, alter the length of the school day based on the needs of the student.
- (d) District board of education operated special class programs for preschoolers with disabilities shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of student instruction, with the following exception:
  - 1. Preschool disabled classes operated by a district board of education shall operate at least as long as any district program for nondisabled preschoolers, but not less than 10 hours per week.
- (e) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county offices.
- (f) Physical education services, specially designed if necessary, shall be made available to every student with a disability age five through 21, including those students in separate facilities.
- (g) When a student with a disability transfers from one New Jersey school district to another or from an out-of-State school district to a New Jersey school district, the child study team of the district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with

the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, if the parents and the district agree, the IEP shall be implemented as written. If the appropriate school district staff do not agree to implement the current IEP, the district shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.
  2. If the student transfers from an out-of-State district, the appropriate school district staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the district, develop and implement a new IEP for the student.
  3. The appropriate school district staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.
- (h) When the IEP of a student with a disability does not describe any restrictions, the student shall be included in the general education program provided by the district board of education.
1. When instruction in general education subjects or content areas is provided to groups consisting solely of students with disabilities, the size of the groups and age range shall conform to the requirements for special class programs described in this subchapter. An exception to the age range and group size requirements

may be requested by writing to the Department of Education through the county office according to N.J.A.C. 6A:14-4.9.

2. When students with disabilities participate in physical education, intramural and interscholastic sports, nonacademic and extracurricular activities in groups consisting solely of students with disabilities, the age range and group size shall be based on the nature of the activity, needs of the students participating in the activity and the level of supervision required.
  - (i) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-10, 11, and 14 and this chapter.
  - (j) Each district board of education shall ensure that all students with disabilities have available to them the variety of educational programs and services available to nondisabled students.
  - (k) The district board of education shall provide the parent with the opportunity to observe the proposed educational placement, including the general education setting, special class programs and out-of-district placements in a program operated by another district board of education or a private school placement, prior to implementation of the IEP.
  - (l) When a student with a disability receives instruction for a particular subject area in either a single-subject resource program or a special class program, the student shall receive at least the same amount of instructional time as that provided general education students for each subject area. For students in a single-subject resource program outside the general education class, the student's IEP shall specify the proportion of time in the general education classroom and the resource program for each subject area.

[1. The provisions of this subsection shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. However, school districts may, at their discretion, adhere to the provisions of this subsection prior to July 1, 2007.]

- (m) When a student with a disability transfers from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.

**6A:14-4.6 Program criteria: supplementary instruction and resource programs**

- (a) Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.
- (b) Supplementary instruction in (a) above shall be provided individually or in groups according to the chart at (m) below. Supplementary instruction may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. Instruction in more than one subject may be provided in a pull-out program of supplemental instruction.
- (c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.
- (d) In-class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (e) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. When a resource

program is provided, it shall be specified in the student's IEP. Resource programs shall provide instruction as defined in (i) and (j) below. In-class resource teachers may provide support and replacement instruction at the same time in accordance with the group size limits for in-class support in (m) below. Pull-out support and pull-out replacement shall not be provided by the same teacher at the same time.

- (f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.
- (g) A teacher of supplementary instruction and a resource program teacher shall be provided time on a regular basis for consultation with appropriate general education teaching staff.
- (h) An in-class resource program or an in-class program of supplementary instruction may be provided up to the student's entire instructional day. At the elementary level, replacement pull-out resource classes may be provided for up to no more than three subject areas per day. At the secondary level, replacement pull-out resource classes may be provided for up to the entire instructional day.
- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures or other specialized instruction to access the general education curriculum in accordance with the student's IEP. The primary instructional responsibility for the student in an in-class resource program shall be the general education teacher unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the student's IEP.

(j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the replacement resource program and shall consult with the general classroom teacher as appropriate.

(k) The age span in an approved single-subject pull-out resource program shall not exceed three years in elementary programs, and shall not exceed four years in secondary programs.

[1. The provisions of this subsection with respect to elementary programs shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. For the 2006-2007 school year, the age range in elementary programs shall not exceed four years. However, school districts may, at their discretion, adhere to the provisions of this subsection prior to July 1, 2007.]

(l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.

(m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

Resource and Supplementary Instruction	Preschool/Elementary		Secondary	
	No Aide	Aide Required	No Aide	Aide required

In-class	8	--	10	--
Pull-out support and supplemental instruction				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9

	Preschool/Elementary		Secondary	
Replacement Resource	No Aide	Aide Required	No Aide	Aide Required
Pull-out				
Single subject	6	7 to 9	9	10 to 12

- (n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and ten at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.
- (o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be increased in accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.

- (p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.
- (q) For the 2006-2007 and 2007-2008 school years, multiple-subject replacement pull-out resource programs may be operated in accordance with the provisions of this section for a maximum of four students in any such program at both the elementary and secondary levels. The four student limit shall not be excepted pursuant to N.J.A.C. 6A:14-4.9. Beginning July 1, 2008, multiple-subject pull-out resource programs shall no longer be operated.

**6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation**

- (a) A special class program shall serve students who have similar intensive educational, behavioral and other needs related to their disabilities in accordance with their individualized education programs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the core curriculum content standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The regular education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:
  1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;

2. The age span in special class programs shall not exceed [three] **four** years in elementary programs, and shall not exceed four years in secondary programs;

[i. The provisions of this paragraph with respect to elementary programs shall become effective on July 1, 2007 for the 2007-2008 school year and beyond. For the 2006-2007 school year, the age range in elementary programs shall not exceed four years. However, school districts may, at their discretion, adhere to the provisions of this paragraph prior to July 1, 2007; and]

3. A kindergarten shall not be approved as a special class program.

- (b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.
- (c) The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe cognitive disabilities or severe to profound cognitive disabilities.
- (d) Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.
- (e) Instructional group sizes for preschool, elementary and secondary special class programs shall not exceed the limits listed below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as set forth below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

I	II	III
Program	Instructional Size:	Instructional Size:
	No Classroom Aide	Classroom Aide Required

	Required	
Auditory impairments	8	9 to 12
Autism <sup>1</sup>	3	4 to 6 7 to 9 (Secondary only; (Two aides required)
Behavioral disabilities	9	10 to 12
Cognitive <sup>2</sup>		
Mild	12	13 to 16
Moderate	10	11 to 13
Severe	3	4 to 6 7 to 9 (Two aides required)
Learning and/or language disabilities		
Mild to moderate	10	11 to 16
Severe	8	9 to 12
Multiple disabilities	8	9 to 12
Preschool disabilities <sup>3</sup>	--	1 to 8 9 to 12 (Two aides required)

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- 1 A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.
- 2 A program for students with severe to profound cognitive disabilities shall maintain a three to one student to staff ratio.
- 3A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.
- (f) Secondary special class programs are defined as programs which are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.
- (g) In addition to the requirements for instructional size for special class programs according to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased with the addition of a classroom aide up to 16 students.
- (h) Vocational education programs shall meet the following criteria:
1. For the student placed in a vocational program outside of the local district, responsibility shall be as follows:
    - i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;
    - ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district

board of education. Vocational personnel shall participate in the IEP decisions; and

2. In vocational shop and related academic programs, class sizes shall be as follows:

i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted according to N.J.A.C.

6A:14-4.9. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:

- (1) The nature and degree of the student's educationally disabling condition;
- (2) The interests, aptitudes and abilities of the student;
- (3) The functional level of the student;
- (4) The employment potential of the student;
- (5) The type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

(i) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:

1. Community rehabilitation programs shall be approved by a State agency, including, but not limited to, the New Jersey Department of Labor and Workforce Development, Division of Vocational Rehabilitation Services, the New Jersey Department of Human Services, Commission for the Blind and Visually Impaired and the Department of Human Services, Division of Developmental Disabilities,

to provide vocational evaluation, work adjustment training, job coaching, skill training, supported employment and time-limited job coaching;

2. Placement shall be made according to the student's IEP. The IEP shall specify the core curriculum content standards to be met and shall address how the instruction will be provided; and
3. Within 10 calendar days of placement in community rehabilitation facilities, the district board of education shall provide written notification of the placement to the county office.