

## Issue # 1-

### Hot Issue - 2004 Re-Authorization of the *Individuals with Disabilities Education Act* (IDEA) and possible changes to New Jersey Administrative Code Title 6A Chapter 14 Special Education (N.J.A.C. 6A:14)

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The IDEA was re-authorized in November 2004. As states began the process of writing regulations relative to the most current mandates of the act, the federal regulations were published in mid August 2006. New Jersey's Special Education Code N.J.A.C. 6A:14 was updated effective September 5, 2006. Since all updated state regulations must reflect current mandates conforming to the federal regulations, the code has undergone a number of revisions since 2006, including the most recent in August 2014. It is possible that more extensive revisions may occur after the current Governor's Task Force on Special Education meets and makes its final recommendations. After recommendations are made and formulated into suggested code changes, there will be an opportunity for testimony on any regulation within N.J.A.C. 6A:14. The School Affairs Committee (SAC) of the *New Jersey Speech-Language-Hearing Association* (NJSHA) will be watching for any action relative to N.J.A.C. 6A:14. Efforts of Governor Christie's *Transformation Task Force*, which was charged prior to the current Task Force with looking over all regulations due for revision with the goal of paring down excessive regulations, were quashed when the *New Jersey Education Association* (NJEA) created a stakeholders task force to draft testimony on the suggested changes. Due to all the testimony, much of it from parents and other advocates, and the NJEA's efforts at legislation relative to the suggested changes, any regulations in N.J.A.C. 6A:14 that are above and beyond the federal regulations supposedly will not be trimmed excessively.

a) The most disheartening change in the re-authorization of IDEA 2004 relative to SLPs was that the "highest qualified provider" clause was eliminated and replaced by "highly qualified provider." This change means that each state will be able to determine the highest level of requirement for the certification of an SLP in the schools. The result may be that some states now requiring Master's degrees will lower their standards for certification to a Bachelor's degree. Such a relaxation in standards will directly affect the

future services that students with language-learning disabilities all over the country will receive. Another negative effect could be the inability of personnel who do not have Master's level training to appropriately diagnose speech-language disorders, especially if the disorders are subtle, rare or simply out of their accumulation of knowledge and experience. There are no current plans for New Jersey to take the route of changing certification requirements, but SAC and the Legislative Committee of NJSHA will be monitoring the situation.

A critical issue relative to qualified providers will be the re-imburement of Medicaid services in the schools. Medicaid requires that an SLP with credentials commensurate with the *American Speech-Language-Hearing Association* (ASHA) requirements for the *Certificate of Clinical Competence* (CCC) must sign off on students receiving Medicaid monies not only for their own therapy but also for therapy delivered by any provider with lower qualifications. In some states, providers must have CCC to sign off. In New Jersey CCC or equivalent, which may be a license obtained from the Division of Consumer Affairs in Newark, may suffice. Medicaid requirements have brought added work and dilemmas for school-based SLPs. Currently some school based SLPs in New Jersey are questioning the fact that schools seem to be allowed to use their credentials (either a license from the Division of Consumer Affairs in Newark or CCC) without their explicit permission. Although, due to being a matter of public record, these credentials can be found on-line, the question as to whether the Public Consulting Group (PCG), the group that runs NJ's SEMI program in the schools and districts have a right to use an individual SLS's credentials without her explicit permission, remains an issue. Since signing off on Medicaid is now done via computer and since SLSs are being directed to input their therapy information, does such input constitute permission even if an SLS does not wish to grant such permission? This question remains unanswered and requires further research.

Other changes in the re-authorization of IDEA include the possible elimination of objectives from IEPs (not yet happening in New Jersey), proposed paperwork reduction to be piloted in 15 states, 3 year IEPs, relaxation of requirements on attendance at IEP meetings and the re-instated ability to amend an IEP with a parent signature instead of holding a formal IEP meeting. Becoming members of national and state speech-language-hearing associations will help SLPs to keep abreast of current issues. Both ASHA and NJSHA have venues for alerting members about writing and submitting testimony or letters to their constituents at critical points.

b) Two changes of note in the IDEA are the enabling of districts to choose to (1) use IDEA funds to provide early intervening services (EIS)<sup>1</sup> and (2) use Response to Intervention (RTI) in place of the discrepancy formula for the classification of *specific learning disability* (SLD) and possibly other disabilities. These possible choices translate into interventions being designed and carried through by teachers and at times, by professionals who evaluate students with learning disabilities and who may now be able to work directly with teachers to provide strategies and techniques that will aid in differentiating children who are delayed or environmentally deprived from those who truly have learning disabilities. If their districts choose to participate in EIS or to use RTI, SLPs should work with other district professionals to become involved in both initiatives. Such involvement could present a chance to show districts what a significant asset SLPs' knowledge of language is in developing strategies and techniques to help students to read more fluently, to comprehend information being conveyed by teachers and to express themselves more appropriately and accurately. EIS and RTI are in alignment with *No Child Left Behind* (NCLB) of 2001.<sup>2</sup> Students will not be considered to have a disability if they have not been instructed in reading and math programs based on "evidenced-based practice" (EBP). It is of note that the regulations clarify that the intent of EIS or RTI is not to defer any immediate evaluation for special education that would be required in order to provide a student with a free appropriate public education (FAPE).

A final intended change in the original re-authorization of the IDEA was resolved due to the proactive efforts of ASHA. The classification category of SLD – (Sec. 300.308, Group Members) was changed to require the eligibility group for children suspected of having SLD to include the child's parents and a team of qualified professionals, including speech-language pathologists. Originally, SLPs were omitted from the list of team members until ASHA lobbied for them to be listed in the final regulations, as they had been in the 1999 final Part B regulations.

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<sup>1</sup> Do not confuse EIS with EI, which is the acronym for Early Intervention. In New Jersey, EI is administered through the Department of Health as opposed to the Department of Education.

<sup>2</sup> Recently states have been given the opportunity to ask for relief of the requirements of NCLB through the *Elementary and Secondary School Act* (ESEA) flexibility.

c) When N.J.A.C. 6A:14 was re-adopted, criteria for SLD was changed due to new requirements of IDEA to allow for RTI in place of a discrepancy formula. Criteria for the categories of *Communication Impaired* (CI) and *Preschool child with a disability* (PSD revised category name) also were altered. Although the change in the criteria for CI was minimal, misinterpretations of the intent of this change occurred quickly. Two examples of such misinterpretations were the misinterpretation that there would be no more classification of CI for middle and high school students and that the Learning Disabilities Teacher Consultant (LDTC) needed to demonstrate that the children's scores on educational testing are below the 10<sup>th</sup> percentile. In actuality, the only change in the criteria was that the words "(test of) oral language" were changed to "one of which shall be a comprehensive test of both receptive and expressive language."

In prior codes there had been no specific criteria for the category previously labeled *Preschool Disabled*. The current PSD category requires that "a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas." Percent delay is calculated by comparing a child's chronological age with the language age achieved on a standardized measure.

d) Because N.J.A.C. 6A:14 was opened for revision, some regulations that do not relate to the re-authorization of the IDEA also may have been changed. One area in which this happened was that of consultation. Previously consultation could not be considered as a service delivery option for speech-language therapy in New Jersey. This related services section in code was changed to allow for consultation by related services providers, teachers of students with disabilities or child study team (CST) members to general education teachers and/or teacher aides. If used, consultation must be specified in each student's IEP along with the frequency and duration of the consultation(s). Examples of tasks that may be considered for consultation also are included.

Consultation is only one area not reflecting a change in the IDEA that has been altered in New Jersey's Special Education Code. There are numerous additional revisions in regulation. The current Governor's Task Force may recommend the elimination of more restrictive regulations in N.J.A.C. 6A:14 that may benefit students with disabilities but do not appear in IDEA. It is the responsibility of SLPs who work in the schools to keep current on issues

relative to the IDEA, to testify on proposed revisions and to read any newly adopted special education code.

e) Most notably, IDEA is up for re-Authorization in 2010. The 2004 re-authorization was two years delayed. It looks like the 2010 re-authorization is following the same pattern or worse.

### **Implications of points made above for Speech-Language Pathologists Who Work in School-based Settings - *Issue #1***

a) SLPs must remain aware of Medicaid requirements and of the duties they are asked/told to perform. Implications relative to liability are of the utmost importance and should be considered by all personnel before signing off on any Medicaid document (currently done through a computer based program). Requirements, such as logging of services performed for Medicaid reimbursement, are also changing and no doubt, will cause more paperwork for school-based SLPs. SLPs should advocate for time to perform extra work required by Medicaid and for some of the significant financial reimbursements from Medicaid to go back to the speech-language department in some manner. If they do not, more of their time will be demanded with no rewards.

If students being logged for Medicaid reimbursement are served by Bachelor's level practitioners who have a Speech Correctionist certificate, Master's level SLPs in school districts may be directed to sign off for Bachelor's level practitioners, who then will be considered under their direction. SLPs must be knowledgeable about what the term "under the direction of" means and should be given the option of signing off or choosing not to do so. ASHA has prepared a statement on this topic. SLPs should be aware that signing off on Medicaid is a choice not a mandate and they may seek legal counsel privately or from their education associations (unions) if they are directed to sign off. Signing off on another practitioner's therapy under Medicaid means that an SLP has satisfied the Medicaid requirements of "under the direction of."

The requirements below are listed in an attachment to a January 5, 2009 memo from Barbara Gantwerk, past NJ Assistant Commissioner of Education, Division of Student Services: "'Under the direction' means that the ASHA-certified or equivalent personnel:

- Maintains responsibility for the services delivered;
- Sees the student, at least, once;
- Provides input into the type of care provided;
- Monitors treatment status after treatment has begun;
- Meets regularly with the staff being supervised; and
- Is available to the supervised staff."

The first bulleted requirement means that the SLP who signs off *agrees to accept legal responsibility for any action brought against the practitioner who provided services*. There are implications for being held liable for another's services and for supervising a colleague, which is why NJSHA feels signing off on Medicaid must be a choice. If an SLS does sign off and does not meet all of the requirements listed above, fraud is being committed. In New Jersey school districts, an individual must have a supervisor's certificate to supervise another teacher or staff member, which NJSHA feels is another issue to consider when an employee in a parallel position is "under the direction of." SLPs may also seek the aid of ASHA and their state association if told to sign off for another practitioner for Medicaid.

In addition, there is debate about the requirements for certification of personnel who can sign off on Medicaid. The attachment to the Gantwerk memo clarified criteria for SLPs signing off on Medicaid. It states that the SLPs "must be: certified or endorsed by the Department of Education and hold a Master's Degree in speech pathology and hold a Certificate of Clinical Competence by ASHA); or certified or endorsed by the Department of Education and hold a Master's degree in speech pathology received after January 1, 1993 and completed the equivalent educational requirements and work experience necessary for ASHA certification." The reason that SLPs who obtained their Master's degree before 1993 and hold a state license from the Audiology and Speech-Language Pathology Advisory Committee were designated as not being able to sign off on Medicaid is that the requirements for state licensure prior to 1993 were not rigorous enough to meet ASHA standards. For example, prior to 1993 a clinical fellowship (CF) was not required for licensure. The most current Medicaid Handbook from New Jersey does not stipulate the 1993 requirement, however. The question became whether or not SLPs must have state licensure in addition to the SLS certification and CCC to sign off on Medicaid. According to clarification NJSHA has received, some school districts may, of their own accord, be requiring licensure, but the NJDOE does not. It is suggested that school-

based SLPs ask their school Medicaid coordinator this question or call a representative from PCG.

Finally, the memo states "school districts are required to maximize their participation in the Special Education Medicaid Initiative (SEMI)." This statement could put pressure on SLPs with the appropriate qualifications to sign off on Medicaid for others as well as themselves. Again, consult with an attorney if you have concerns. NJSHA always advises that any SLP signing off on Medicaid (for themselves or another) have personal liability insurance.

Lowering the highest qualified provider standard in IDEA allows states to reduce standards in certificates for personnel who provide speech-language therapy to students. Already, in California and Pennsylvania, state departments of education have created certificates that could potentially replace SLPs in schools. If there was ever a time for SLPs to demonstrate their worth in the schools, it is now!

**b)** In districts that choose to implement EIS and RTI, SLPs should become involved, which would be an excellent way for them to demonstrate the value of their knowledge relative to reading, writing and learning. Language is the basis of all curricula. If SLPs do not work with teachers to provide language-based strategies for students at risk, someone else with a good deal less knowledge about language will. If EIS for students with potential language disorders are to be successful, the personnel with the expertise in language (SLPs) should be one of the team members providing the suggestions for strategies or the strategies themselves. SLPs should work with their schools' administrators to be sure they participate in these services. SLPs also have a great deal of knowledge and know many strategies to help students with language problems and language-based reading disorders. EIS is an excellent way to share knowledge and reach students demonstrating such issues by going into the classroom and modeling techniques that teachers can eventually use on their own or combined with consultation efforts. When SLPs are given the option to attend a continuing education program on RTI, they should jump at the chance. SLPs also must remain knowledgeable about EBP to support the interventions and programs that they are using with disabled students.

SLPs who have been providing in-class services over the years will be better prepared to work with teachers on strategies for both EIS and RTI. In a sense, the implementation of in-class services, if provided appropriately, has

already proven to be EIS for students who just happened to be in a class serviced by SLPs delivering collaboratively planned therapy in classrooms. Even if a school is not currently implementing RTI, it may become the wave of the future. Keep in mind that the impending 2010 Re-authorization of IDEA may include more mandates for RTI. One way to prepare for RTI and show their worth is for SLPs who have not already done so to come out of the closet and provide in-class services. Remember, research has revealed that reading is a language-based skill, beginning with the area of phonology. The SLP's expertise in phonology as well as all other aspects of language renders him a key player in the facilitation of reading skills. ASHA fought hard to have the SLP designated as a team member who could help with the diagnosis of SLD. Don't miss this opportunity to share knowledge and let others learn that the SLP has expertise in improving students' chances to learn to decode, read more fluently and comprehend what has been read.

c) SLPs should be aware of misinterpretations of the altered criteria for CI. If told that there is substantive change in the criteria, SLPs should compare copies of the wording of the criteria in previous Code with current N.J.A.C. 6A:14 regulations, thus demonstrating the minimal change in criteria to their administrators.

Since language age on a standardized test is the least reliable indicator of a child's delay, testimony in the area of the classification of preschoolers with a disability will be needed when the code is re-opened for comment. Using percent delay causes some children who should not be eligible for services to become eligible while causing others who should be eligible for services to be found ineligible. Although it is not in code, the New Jersey Department of Education (NJDOE) has indicated that instead of using percent delay, standard scores may also be used for preschoolers. Unfortunately, the Department is recommending 2 standard deviations below the mean as criteria, which ignores preschoolers who have mild and moderate language delays or disorders. This appears to be in contradiction to recent acknowledgement by federal and state agencies that early intervention is critical. It is important to perform a good functional assessment and to support eligibility of preschoolers who have language delays and disorders that are truly impacting, in some cases compromising, their educational performance but may not meet restrictive criteria. Again,

SLPs should remain aware of the revision of code and watch for e-mails from NJSHA containing sample testimony to help rectify this problem.



**d)** In previous codes, consultation could not be considered as part of IEP services. The inclusion of consultation is another reason to become familiar with in-class services. It is more difficult to consult without knowing the ins and outs of classroom life. SLPs should also be ready to advocate for services that must be delivered directly by them. Although consultation is now in regulation, it does not replace the requirement for direct services if those services are needed to deliver FAPE. Consultation will require logging what was done with whom. It has been reported that some administrators and CST case managers do not like to put consultation down as a related service when it is in addition to pull-out and/or in-class services. Again, all decisions must be made by the entire IEP team and based on the needs of the individual student.

**e)** Whenever IDEA is re-authorized, the New Jersey Special Education Code 6A:14 will be revised. Though the re-authorization of IDEA has been put on hold, keep current on this event. In the meantime, recommendations for changes in N.J.A.C. 6A:14 may occur after the Governor's current *Special Education Task Force* has finalized a report.

SLs should keep in mind that, once revisions to N.J.A.C. 6A:14 are proposed and open for comment, any regulation may be addressed in testimony, whether or not it is being revised. The NJDOE does consider all testimony, especially when numerous testimonies are received on similar issues. One issue, which is always deserving of testimony, is the request to codify that SLs have an apportioned amount of time for evaluating students classified Eligible for Special Education and Related Services (ESERS). Since SLs case manage all students classified Eligible for Speech-Language Services (ESLS), testing time is covered for those students under N.J.A.C. 6A:14-3.2 (c) 3. Case Manager. It is important for SLs to be proactive and send in testimony when the opportunity presents itself. There is strength in numbers.

**Issue # 2-**

## Hot Issue - Teacher Evaluation Tools

Senate Bill S1455, “Teacher Effectiveness and Accountability for Children (TEACHNJ) Act,” has passed. This Bill, though about tenure, incorporates assessment of teachers. In summary, SLSs and other holders of educational services certificates are NOT subject to the evaluation (or the first year mentorship) components of this bill. It was widely understood that legislating an evaluation process for educators who work with students with special needs would not be workable. Section 24 of the bill states that the “State Board of Education shall promulgate regulations . . . in accordance with an expeditious time frame, to set standards for the approval of evaluation rubrics for all teaching staff members other than those included under the provision of subsection b. of Section 17” (teachers).

The new system was scheduled to be in place in all districts for the 2013-14 school year. In that system, a percentage of teachers' performance evaluations must be based on the results of their students' scores on statewide assessments. This percentage will be as high as 50% for teachers but may be lower for other areas. Since not all subjects taught are measured by statewide tests, the State is looking into how teachers of subjects other than Language Arts and Math are to be assessed.

NJSHA SAC representatives met with representatives from the NJDOE in December 2012 and they were invited to submit an evaluation tool that would work for SLSs. SAC representatives were told that the DOE is providing a “fair amount of latitude” to local districts for the evaluation of specialists and that districts may choose an appropriate method of evaluating specialists.

## Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - **Issue #2**

School-based SLPs must remain vigilante concerning the future of tenure and teacher evaluation in New Jersey. ASHA's *Professional Performance Review Process for the School-Based SLP* can be found at: <http://www.asha.org/uploadedFiles/Publications/leader/2007/070213/SLPPP RP06.pdf#search=%22SLP%22>

but may be too involved for use in NJ school administrators who are not SLPs. Another version of the tool, which may consider the desire to use test scores as evaluation criteria, may be developed by ASHA. In the case that

officials ever propose that standardized testing used for diagnostic purposes become a measurement of student progress, school-based SLPs must be ready to educate officials on the inappropriateness of such a measure.

Charlotte Danielson has a model of evaluation for special subject areas and therapists. NJDOE officials accepted the rubric created by NJSHA, based on the Danielson rubric for specialists, and has put it up on their website as a choice for districts to adopt for their SLSs. Go to [http://www.nj.gov/education/AchieveNJ/resources/index\\_other.shtml](http://www.nj.gov/education/AchieveNJ/resources/index_other.shtml) to find the NJDOE link to the SLP Specialist rubric on the NJSHA website. Due to a licensing agreement, NJSHA can only allow access to the rubric by members.

It is important that SLSs listen to and continue to communicate with representatives of their local unions to educate them on the differences on evaluating SLSs or speech correctionists vs. teachers and to help their district choose an appropriate evaluation tool. NJSHA will continue to work with officials from the NJDOE to establish evaluation criteria for SLSs that make sense. Each district must pick an evaluation tool, but according to NJDOE officials, the tool can differ for teachers and SLSs.

### **Issue # 3**

#### **Hot Issue – Professional Development for SLSs**

New Jersey professional development (PD) obligations require all active teachers to complete twenty hours of State-approved professional development every year, [N.J.A.C. 6A:9-15.4(a)]. IDEA requires that each state create their own professional development regulations for special educators. To that end, SLSs have support to advocate for compliance with the regulations in New Jersey's Licensure and Standards Code N.J.A.C. 6A:9. Reports from a number of SLSs indicate that they have been denied release time for out of district workshops and conferences and are being provided with in house PD relative only to curricula but not to specific speech-language needs. SLSs should point out support for appropriate PD in their specific field including training and education relative to individual professionals whose charge it is to provide children with disabilities a free appropriate public education in the least restrictive environment. They can

cite the following regulation from N.J.A.C. 6A:9 (significantly important information in bold)

**N.J.A.C. 6A:9-3.3.**

(a) Teacher preparation, district induction and professional development programs shall align their learning opportunities with the following standards:

1. Standard One: **Subject Matter Knowledge.** Teachers shall understand the central concepts, tools of inquiry, structures of the discipline, especially as they relate to the New Jersey Core Curriculum Content Standards (CCCS), and design developmentally appropriate learning experiences making the subject matter accessible and meaningful to all students.

i. Teachers know and understand:

(1) **In-depth the subject matter they plan to teach and the relationship of that discipline to other content areas;**

(2) **The evolving nature of the discipline or subject matter knowledge and the need for keeping abreast of new ideas and understanding of the discipline;**

(3) **That literacy skills and processes are applicable in all content areas and help students to develop the knowledge, skills and dispositions that enable them to construct meaning and make sense of the world through reading, writing, listening, speaking and viewing; . . .**

For a PDF of N.J.A.C.6A:9-3.3, go to

<http://www.state.nj.us/education/code/current/title6a/chap9.pdf>

**Implications for Speech-Language Pathologists Who Work in School-based Settings - *Issue #3***

As N.J.A.C. 6A:9 -3.3 (a) 1. i. (2) above clarifies, when there is evolving information within a discipline, of which professionals must be aware, in order to develop and implement the most appropriate programs, those professionals should “know and understand” that information. Such knowledge and understanding cannot come about for SLSs unless they are

granted time and/or resources to take part in such PD. In order to provide FAPE, SLSs and administrators must be aware of the PD needed that is

directly related to the students on SLSs' caseloads. When completing professional improvement plans with administrators, SLSs should include the discipline specific training that will be needed in order to appropriately address students' deficits.

For example, SLSs serving students with Dysphagia or AAC devices as new areas of treatment for disabilities have the responsibility to alert their supervisors of any need for additional training. In the same vein, if SLSs need to attend workshops that facilitate the use of in-class collaboratively planned services for specific types of disorders, such as Autism and language learning disabilities, permission to attend such workshops should be granted.

Another example might be to include PD on Dyslexia in light of the recently passed law A3606, which requires the DOE to provide professional development opportunities related to reading disabilities and mandates certain school district personnel to complete two hours annually of professional development related to reading disabilities. This requirement includes SLSs. Since reading has been shown to be a language-based skill, SLSs' knowledge can contribute greatly to collaborating with teachers in an effort to improve literacy for all students as well as in efforts to identify students with reading and writing disabilities.

If any disagreement for the granting of professional days occurs, SLPs should point out that unless they remain current on new techniques and techniques to which they may not yet have been exposed, the students they serve may be denied FAPE and will certainly require services for longer periods of time.

As a professional, you may also want to seek out your own PD such as discounted Webinars hosted by NJSHA, available programs at NJSHA Annual Convention (for more information please visit <https://www.njsha.org/continuing-ed/convention.php>), free workshops provided by the New Jersey Association of Speech-Language Specialists (NJASLS)<sup>3</sup> at the NJEA Annual Convention in November, or free CEUs from Lingui-systems at <http://www.linguisystems.com/ceu> If the PD needed by an SLS, however, requires off-site travel, that PD should be granted.

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<sup>3</sup> NJASLS is an NJEA affiliate group

## **Issue # 4**

### **Hot Issue - Missed Speech-Language Sessions**

Increasingly, over the past few years, in a number of districts, SLPs have been told that they must make up all speech-language sessions missed due to the SLP's absence. Speech-Language Specialists (SLSs), who are directed to make-up sessions, should keep two things in mind. First SLSs, like all teachers, are entitled to take off days as stipulated in their contracts without having to make up days off. Second, where is the time to make up sessions, when there is barely time in most schedules to complete evaluations, IEPs and mandated meetings?

Information received from the NJDOE is that NOT ALL sessions must be made up. One session missed here and there is not a problem. Problems occur when there is a pattern of absences and a student's right to FAPE has been compromised. This information was confirmed in a letter of response to Catherine Clark of ASHA that can be found at

<http://www.asha.org/uploadedFiles/advocacy/federal/idea/OSEPResponseLetterGuidance.pdf>

It is NJSHA's understanding that federal Office of Special Education Programs (OSEP) is going to reissue the response so that the date on it is current. SLSs should try to make up sessions when possible, but that is not possible unless there is adequate testing time in a schedule along with lunch and preparation periods that can be flip-flopped. If, however, sessions are being made up by increasing the number of students in each group, for example, that may jeopardize the right to FAPE of even more students. Log any such patterns, especially if group size is specified in the IEP. If SLSs are constantly using contractually provided prep time to make up sessions, their collective bargaining contract is being violated and the practice can be grieved. Payment should be a portion of the SLS's salary, not coverage pay, because the SLS is actually planning for and teaching an extra period. If testing/case management time is being used, then directors should be informed that that such practice may cause evaluations and other mandated paperwork to be out of timelines. None of the actions suggested above should be taken without informing the local union president and requesting a file on the situation to be kept.

Keep in mind, however, that if an SLS has time in her schedule to make-up students, NJSHA is not against this practice. If an SLS can fit students who

have missed services appropriately into another group, there is no reason not to make-up those sessions. If an SLS has open slots in a schedule or is not making use of a testing/case management period, those times can be used appropriately to make-up students who have missed sessions due to their own or the SLS's absence. What NJSHA is against is the requirement for SLSs to make up all sessions due to use of personal or sick days, regardless of the manner in which sessions are made-up or the appropriateness of the make-up groups. The issue of professional days is more difficult to address since those days often are granted at the discretion of the district. If other staff members are granted professional days without a requirement to make them up, however, SLSs should also be granted such days without question. Contesting make-ups on professional days may boil down to picking your battles.

### **Implications for Speech-Language Pathologists Who Work in School Settings - *Issue #4***

If directed to make up missed sessions, SLSs should ask their directors/supervisors to call the county office of education and ask the special education consultant in that office to refer to the clarification in the November 30, 2005 letter from Carol Kaufman. A copy of Ms. Kaufman's letter is attached. Copies of other letters of clarification on many aspects of Code, may be accessed by members at [www.njsha.org](http://www.njsha.org) under the title, *New Jersey Speech-Language-Hearing Association School Affairs Steering Committee Index and Compilation of: New Jersey Department of Education Code Clarification Letters and Complaint Investigation Reports Impacting Speech-Language Services in the Schools*. If contacting the county office of education does not alleviate the directive, immediately inform the local union about any requirements being set by the district to make up missed sessions. Inform the president of the union that NJEA has alerted the county UniServe offices to distribute the message that directing any teacher to make up days for their absences is against contract and puts all members' rights to use their personal, sick and professional days at risk. Ask your local president to call the county UniServe office for clarification on this issue.

In addition, let NJSHA know about any directives to make up missed sessions. Failure to take action in such situations may cost SLSs their right to take sick, personal and professional days as guaranteed in contracts. Remind union presidents that such loss of contractually designated absence days could set a precedent for the loss of days by other personnel under a collective bargaining contract in the schools. As with under collective

bargaining issues, all groups, regardless of number of personnel in a district, have a right to fair representation.

## **Issue #5**

### **SLS Certificate, Emergency Certification and Privatization**

Almost from the point that it was placed into regulation, the Speech-Language Specialist (SLS) certificate (required for an SLP to work in NJ's schools) was a problem. Prior to 2003 the requirements were so specific that they became restrictive. Some SLPs who were duly certified by ASHA and/or licensed in NJ, did not meet the requirements for the SLS certificate. After over a decade of presentation of testimony and networking with the NJDOE, restrictive requirements to obtain the SLS certificate were finally changed in regulation (October 6, 2003). Issues remained, however, in the granting of emergency certificates to districts to employ speech-language personnel under very lax requirements.

A positive change in IDEA 2004 concerning emergency certificates enabled NJSHA representatives to challenge the use of such weak requirements. The regulations at 34 CFR sec. 300.156(b)(2)(ii), consistent with section 612(a)(14)(B)(ii) of the Act, requires States to ensure that related services personnel who deliver services in their discipline or profession have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis. Since this regulation indicates that a State may no longer grant emergency certification in the area of special education, NJSHA testified against New Jersey's regulations allowing the use of emergencies when a "suitable" candidate cannot be found. Removal of the word "suitable" in regard to an emergency certificate for SLS positions had been suggested in 2008 testimony, but the NJDOE disagreed with this suggestion. NJSHA followed up on this disagreement by writing to the United States DOE OSEP to ask whether or not this regulation is in line with the federal mandate. The response indicated that the use of any emergency certificates was against regulation and a violation of the IDEA.

Because the NJDOE received notice from the USDOE that emergency certificates for related service providers are, in fact, against IDEA regulation, the ability to hire emergency certified personnel was discontinued as of July 31, 2013. The Office of Licensure and Credentials has adopted new regulations to allow for a Certificate of Eligibility (CE) leading to a provisional certificate in place of an emergency certificate.



Both certificates have considerably more rigorous requirements than the emergency certificate.

The NJ Administrative Code, 6A:9-13.6 Speech-Language Specialist, now contains the following requirements:

(a) The speech-language specialist endorsement authorizes the holder to provide service as a speech-language specialist in grades preschool through 12.

(b) to be eligible for the standard educational services certificate with a speech-language specialist endorsement, the candidate shall:

1. Hold a master's or higher degree in speech-language pathology from a regionally accredited college or university; and
2. Pass a State-approved test of comprehensive knowledge in the field of speech-language pathology.

(c) Individuals who hold a valid New Jersey speech correctionist endorsement and a master's degree in speech-language pathology shall be issued the speech-language specialist endorsement upon submission of a completed application and required fee.

(d) Individuals holding a valid New Jersey speech correctionist endorsement who have completed seven years of work as a speech correctionist in a New Jersey school setting and a Department-approved retraining program may serve in a position requiring speech-language specialist certification.

(e) A certificate of eligibility annually expiring July 31 may be issued to candidates who meet the requirements in 1 or 2 below. Notwithstanding the provisions of N.J.A.C. 6A:9-8.2, this certificate of eligibility authorizes the holder to seek employment in any public school district or Department-approved private school for students with disabilities. To be eligible for the speech-language specialist certificate of eligibility and subsequent provisional certificate, the candidate shall either:

1. Hold a bachelor's degree in speech-language pathology/communication disorders from a regionally accredited college or university, and
  - i. Be currently matriculated in a master's degree program in speech-

- language pathology/communication disorders from a regionally accredited college or university; and
- ii. Document completion of a minimum of 18 semester-hour graduate credits in speech language pathology/communication disorders, including a graduate clinical practicum; or
- 2. Hold a bachelor's degree in a major other than speech-language pathology/communication disorders from a regionally accredited college or university, and
  - i. Be currently matriculated in a master's degree program in speech-language pathology/communication disorders from a regionally accredited college or university; and
  - ii. Document completion of a minimum of 24 semester-hour graduate credits in speech language pathology/communication disorders, including a graduate clinical practicum.

To be eligible for an initial two-year provisional speech-language specialist certificate, the candidate shall:

- 1. Possess a speech-language specialist certificate of eligibility; and
- 2. Obtain an offer of employment in a speech-language specialist position.

(g) To be eligible for a one-time renewal of the provisional speech-language specialist certificate, a candidate shall:

- 1. Provide an official college transcript from the speech language pathology/communication disorders program in which he or she is matriculated, showing a minimum of 12 semester-hour graduate credits completed each year following the initial issuance of the provisional certificate, demonstrating annual progress toward completion of the master's degree required for the standard certificate; and
- 2. Provide documentation of employment in a speech-language specialist position in a public school district or Department-approved private school for students with disabilities.

(h) A standard certificate may be issued to candidates holding the provisional speech-language specialist certificate who meet the requirements in (b) above.

(i) An emergency certificate shall not be available for the speech-language specialist endorsement after July 31, 2013. However, any emergency certificates in effect on (the date this amendment is adopted) shall remain valid until July 31, 2013.

The proposed changes are the result of years of persistent work and follow through by NJSHA representatives. There had been districts that found a way to be granted emergency certificates, even though qualified personnel were available, most likely because they wanted to save money on salaries.

Another way in which districts try to save money is by hiring independent contractors through a private agency. It has been NJSHA's experience that privatization of services does not save money and often negatively affects student services, not due to quality of services provided but due to factors such as the following; frequent change in service provider, lack of time for provider to thoroughly network and consult with parents and staff and lack of observation and evaluation of students. These factors exist because privatized SLSs are paid hourly or through their own specified contract and including all of the duties performed by in-house SLSs would be cost preventative. All independent contractors, who work as SLSs in NJ schools, should have a license from the Division of Consumer Affairs in Newark in addition to the SLS endorsement from the NJDOE.

### **Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - *Issue #5***

Although ASHA and state speech-language-hearing associations worked to encourage officials to ensure that the highest qualified provider clause remain in the IDEA, they were unsuccessful. The states now have the responsibility of regulating the degree necessary to practice in the field of speech-language pathology in the schools. The overall effect may be to weaken the caliber of professionals working in our nation's schools. Fortunately NJ is changing its requirements to delete the ability of districts to obtain emergency certificates while keeping the SLS certificate at a Master's level.

SLSs in the schools cannot become lax about the SLS certificate, however. During 2009 both California and Pennsylvania state DOEs created weaker certificates that could potentially encourage replacement of SLPs in schools, in addition to their equivalent of the SLS.

Due to the high cost of educating children, schools are attempting to keep students with more severe disabilities in their home schools. This is good news for the least restrictive environment (LRE) requirement of the IDEA, but to keep students with severe disabilities in district while serving them

effectively, proper supports must be provided. Highest qualified SLPs will be needed to deal with these students if progress is to be made. It is therefore contradictory for SLPs not to be required to meet the highest qualified provider requirement.

SLSs must be aware of what is going on when they are interviewing for a job and after securing a position. Any school-based SLPs who have information that an emergency certificate being granted after July 31, 2013 or of underqualified personnel working under substitute certificates, should report this information to the NJDOE. If nothing else, make NJSHA or NJASLS aware of any such occurrence; e-mail info@njsha.org or njasls@yahoo.com.

If the hopefully unlikely possibility of lowering credentials for SLS certification in New Jersey ever comes to fruition, in testimony SLPs can bring possible consequences of such an action to the attention of the NJDOE. One detrimental consequence of employing underqualified personnel might be the over identification of students who have developmental speech or language problems that pose no educational consequence. Students whose speech or language weaknesses do not affect educational performance and are not disabling should not be classified under the IDEA. Conversely, underqualified providers could miss the subtler and truly disabling speech and language problems that can significantly impact students' educational performance. In addition, SLPs without Master's degrees and equivalent of CCC cannot sign off on Medicaid, which brings in a significant amount of money to districts.

Upon graduation, SLPs should apply for every certificate or license in the state in which they anticipate wanting to work and for which they qualify. It will be much easier and possibly, less expensive to secure them at graduation than twenty years from now. Keep original records of all practicum hours *forever!*

The changes in New Jersey's SLS certificate and elimination of the emergency certificate would not have come about without the diligent work of SAC of NJSHA. Even with their consistent input, the process of change to the original SLS certificate took about 15 years. Although the wheels of government turn slowly, with NJSHA's contributions, these certification requirements have now changed and both SLPs and children with disabilities benefit. Hopefully SLPs will understand that after securing a job in the schools, they need to continue to monitor current practices and advocate for

changes in regulation that may harm the profession. Only with the active participation of professionals will the careers of SLPs remain rewarding and unthreatened.

If a district chooses to hire independent contractors, SLSs who are working through a district collective bargaining contract, can remind their education associations of any credentials needed to work as a private contractor.

SLSs working in a district that also employs privatized SLPs need to be sure that their rights under the contract are not being violated. They should not become responsible for privatized SLPs' workload responsibilities, such as writing IEPs, attending IEP meetings, performing diagnostic evaluations, applying for Medicaid and numerous other responsibilities. Such practice would be equivalent to a teacher being given the workload of the class of another teacher hired as a private contractor. No education association (union) would stand for such impositions on teachers and they should not allow it to happen to SLSs, in addition to establishing a dangerous past precedent, unions have an obligation to represent all of their members. If the local union will not advocate for SLSs in the district, SLSs can call the county UniServe office to exercise their right to fair representation. Read the ADVANCE article, *Union Advocacy* by Alyssa Banotai– 6/23/08 vol. 18, no. 25, which explains the right of fair representation for all union members and shows how educated SLPs in schools can make a difference for their students as well as their jobs. To access the article, go to

<http://speech-language-pathology-audiology.advanceweb.com/Article/Union-Advocacy-1.aspx>

Furthermore NJSHA is doing research on a regulation in N.J.A.C. 6A:14 that indicates that districts must attempt to hire SLSs on staff under collective bargaining agreements prior to considering employment of independent contractors [N.J.A.C. 6A:14-5.1 (c) 1. v.].

## **Issue # 5**

### **N.J.A.C. 6:28:23A - Fiscal Accountability Regulations**

Several years ago, as a result of a change in Administrative Code intended to implement the CORE bill (N.J.A.C. 6:28:23A) as a new funding regulation, SLS positions as well as other positions in schools were arbitrarily eliminated in various districts. Reduction in force occurred regardless of the fact that there had been no attrition and in many cases there had been a need

for increase of speech-language personnel. Decrease in personnel occurred due to the section of the code granting the Executive County Superintendent an inappropriate and unintended level of authority and review. SLS positions, which fall under federal and state laws and, as all special education personnel, were not supposed to be part of cuts for efficiency. NJSHA joined other organizations and thousands of advocates urging the Department to back away from such provisions and asked that Governor Christie immediately repeal administrative code intended to implement the CORE bill (N.J.A.C. 6:28:23A) section 2.7. The bill remained.

Proposed rules for fiscal accountability have been released. Included in these rules is language that will have an effect on special education and IEP decision-making in New Jersey. The rules are an improvement over the current special ed funding regulations. Go to [http://www.specialedfundingnj.org/pdf/SpEd\\_Code\\_Alert.pdf](http://www.specialedfundingnj.org/pdf/SpEd_Code_Alert.pdf) at the website of the NJ Coalition for Special Education Funding Reform (NJCESFR) to read about continued areas of concern. Significant alteration to the way in which state aid was given to NJ districts occurred when the School Funding Reform Act of 2008 was adopted. Check out the Educational Adequacy Report by the Education Law Center in Newark at [http://www.edlawcenter.org/assets/files/pdfs/Newsblasts/ADEQUACY\\_REPORT.PDF](http://www.edlawcenter.org/assets/files/pdfs/Newsblasts/ADEQUACY_REPORT.PDF)

When Governor Christie revealed his proposal for budget cuts in schools, many SLSs as well as other special education personnel, both tenured and non-tenured were impacted by reduction in their staff. This occurred in spite of the fact that *Maintenance of Effort* (MOE) regulations are required in IDEA. The Governor and his appointees claim that all special education students should be getting what is mandated in their IEPs but there was no monitoring of reduction in special education positions in individual districts. Special education positions were reduced with no more consideration than general education positions. In addition, inappropriate directives that are against state and federal regulations, such as no longer serving middle and high school students, seeing all students in-class as opposed to pull-out and in maximum group sizes, and not classifying students as ESLs unless their grades were low, were reported to NJSHA.

**Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - *Issue #5***

Connected to the current funding bill was a hypothetical *Model School* designating "fiscally responsible" numbers of teachers and other personnel per student(s) in a school, a template of which had been sent to district superintendents. The result was the firing of CST members, speech-language specialists (SLS), as well as other personnel in order to ensure that the district is not held accountable for being fiscally irresponsible. The use of such a model to demonstrate "ideal" numbers of any special education personnel is unfounded, flawed and in some cases became an intimidation tactic that could result in potential violations of state and federal special education law. The use of the model may have been abandoned after the first year of its use, but the reduction in staff that it caused, remained in many cases.

Special education personnel were never intended to be considered as part of any budget cuts because their employment is based on state and federal special education regulations. Unfortunately, SLSs, psychologists and social workers were listed in the personnel involved in this initiative. SLS positions fall under federal and state laws and, as all special education personnel, were not supposed to be part of cuts for efficiency. For years, advocates have researched and testified about concerns related to funding. If new funding regulations are adopted, some of these concerns could be alleviated.

If SLSs become aware of unfounded elimination of SLS positions, they should work with their education associations in their individual districts to show that students with speech-language disorders will not receive FAPE if needed positions are eliminated. They should be aware of whether replacements are being provided for SLSs who retire or if the remaining SLSs on staff are expected to pick up the slack. Such a practice can be shown to be unfounded if SLSs demonstrate that there has been no attrition in caseload and in many cases, an increase. SLSs should ask their education association to keep track of the number and severity of special education students new to the district each year, how many special education teachers are hired to instruct them and how many new classrooms are being created. SLSs and union officials can then track how many of these students require speech-language therapy and the frequency and duration of therapy required. Support for additional SLSs is then provided in concrete numbers.

When NJSHA informally reported (with permission) reduction of staff to the NJDOE, they were told that such issues were personnel issues that needed to be addressed within the district. This gives greater credence for the Speech-

Language department in each district to make themselves known to their local education association (union) and to familiarize their union with the roles and responsibilities of Speech-Language Pathologists in schools. Go to <http://www.asha.org/Publications/leader/2010/100706/Roles-Responsibilities.htm> to find ASHA's 2010 profession issues statement and position statement of Roles and Responsibilities of SLPs in Schools.

If inappropriate directives are given, SLSs can contact NJSHA. When such directives were informally reported (with permission) to both the NJDOE and the USDOE, NJSHA was told that if official complaints were made on specific districts, they would be investigated. Specifically, the USDOE responded in writing, "The IDEA does not include requirements addressing a State's personnel procedures regarding the hiring, dismissal or assignment of staff. Those issues must be addressed at either the local or state levels where the alleged violation has occurred." It went on to state, "OSEP suggests that your organization may want to consider following-up with the State complaint investigation unit regarding potential issues around the denial of FAPE resulting from staff reductions." NJSHA will report any directives given with the intent to make reduction in staff seem valid. In view of the issues with New Jersey's school funding regulations, the *Coalition of Special Education Funding Reform*, of which NJSHA is a member, has requested a study on the funding of special education in New Jersey.

In addition, SLSs should make education associations aware of the following MOE requirements in IDEA.

**§ 300.203 Maintenance of effort. (b) (2) states:**

"An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section."

Though there is mention in the funding bill of the requirement for districts to use funds needed to maintain a *thorough and efficient* system of education and stability of a district board of education's overall operations (6A:23A-



9.8 (a) 2.), there is no mention of the state's or district's responsibility toward MOE relative to IDEA nor to FAPE of students with disabilities, a main tenet of IDEA. SLSs again will need to be vigilant to prevent potential, unjustified elimination of positions in their districts.

The NJDOE applied for and received a waiver for MOE for the 2010 school year. In spite of this waiver, districts must ensure that FAPE is provided for each and every student with a disability. Ask the education association to request proof of how the state is ensuring that FAPE is being delivered in any district where reduction of special education staff occurred.

### **Issue # 7**

#### **Other Issues Affecting the Field of Speech-Language Pathology and School-based Practice.**

Encroachment has long been an issue in the field of speech-language pathology. School-based practitioners must be aware of any attempts of other profession to encroach on theirs. Though collaboration with other professionals is needed, by regulation, SLSs are the professionals in schools responsible to deliver the communication goals/objectives in an IEP. With the increase of students identified as having an Autism Spectrum Disorder (ASD), behaviorists have been employed in many districts to work with students with ASD.

Telepractice is being used throughout the country and telepractice providers have been calling officials in New Jersey school districts to offer their services. Some claim that they can help with the shortage of speech-language personnel in schools.

#### **Implications for Speech-Language Pathology Students who Intend to Work in School-based Settings - Issue #7**

SLSs should be aware that the certificate needed to deliver speech-language therapy is the SLS or Speech Correctionist certificate (until August 2015). Relative to behaviorists or ABA therapists, who are employed to work with children with Autism in public schools, by regulation, any goals that are under the communication section of the IEP must be delivered by the SLS or Speech Correctionist [NJAC 6A:14-4.4 (a) 2.]. In addition, behaviorists or

ABA personnel, who do not have school certification, must be supervised by someone in the district [NJAC 6A:14 - 5.1 (c) 1. iii. (3)]. Since SLSs are responsible for the communication goals, they should be aware of any other discipline that is trying to take over responsibility for these goals. Collaboration, of course, can and should occur but the SLS should take the lead in communication.

Currently there is not a shortage of SLSs in New Jersey's schools. In fact, a number of SLSs have reported to NJSHA that they lost their jobs, even after 20 or more years of employment. Telepractice has the potential for abuse in NJ schools and may fall under the restriction of N.J.A.C. 6A:14-5.1 (c) 1. v. SLSs who work in a district that is considering use of telepractice should be aware that ASHA has established policies on telepractice that can be accessed through their website at <http://www.asha.org/practice/telepractice/>. Two major points of which to be aware are:

§ "The use of telepractice does not remove any existing responsibilities in delivering services, including adherence to the Code of Ethics, Scope of Practice, state and federal laws (e.g., licensure, HIPAA, etc.), and ASHA policy documents on professional practices."

§ Therefore, "the quality of services delivered via telepractice must be consistent with the quality of services delivered face-to-face."

In addition, regardless of where they are located, SLPs implementing telepractice currently must have the SLS endorsement from the NJDOE as well as a license from the Division of Consumer Affairs in Newark.

***Nothing contained in this document should be construed as legal advice or as the formal position of NJSHA. The information contained in this correspondence is informational only and may change without notice at any time. Please consult with an attorney for issues of legal significance.***

## **Attachments**

Gantwerk Medicaid memo

State Operation Medicaid Letter

Kaufman letter on missed sessions

Federal letter on emergency certification.

Div of Cons Affairs letter—Do not post that letter

NJAC 6A;14

