



**NJSHA's School Affairs Committee's Testimony
on Regulations Relative to the Revision of N.J.A.C. 6A:14**

April 1, 2020

The School Affairs Committee of the *New Jersey Speech-Language-Hearing Association* (NJSHA) thanks the New Jersey Board of Education and the Office of Special Education Programs (OSEP) for this opportunity to comment on what may be considered for future changes in the *New Jersey Administrative Code* 6A:14 (N.J.A.C. 6A:14). We appreciate the current change concerning the deletion of the term Speech Correctionist. Since speech correctionists are no longer able to practice in New Jersey's schools without having upgraded to a Speech-Language Specialist (SLS) Equivalent certificate, NJSHA suggests also deleting the term, speech correctionist mentioned a second time in code, so that the definition in N.J.A.C. 6A:14-1.3 Definitions reads "*Speech-language specialist*" means a speech-language specialist or a speech-language specialist equivalent."

The following topics are the ones we have targeted in the remainder of our testimony

- Need for assessment time for SLSs being explicitly outlined within N.J.A.C. 6A:14
- Refining of N.J.A.C. 6A:14-3.5 (c) 4. to ensure that alternative means of assessment may account for eligibility decisions in lieu of standardized tests scores, and an explicit statement that composite scores, subtest scores and analysis of scores (as opposed to total test scores only) may be used when considering eligibility.
- Explicit statement under N.J.A.C. 6A:14-3.5 (c) 4. of a language disorder being receptive or expressive.
- Direction on procedure to follow when a student classified CI no longer requires speech-language pathology services
- Addition of the area of "phonology" in the definition of a language disorder under N.J.A.C. 6A:14-3.5 (c) 4.

NJSHA requests that in addition to case management time stipulated in code, that the Department add a requirement for assessment time for SLSs. Though SLSs case manage Eligible for Speech-Language Services (ESLS) students, most do not case manage Eligible for Special Education and Related Services (ESERS) students and those who do often have large caseloads, making case management of ESERS students prohibitive if the SLSs are to deliver a free appropriate public education (FAPE) to the students in their caseloads. In addition to testing and instructing, SLSs have numerous other responsibilities that differ from teacher's, which include individual testing, comprehensive report writing, arranging and chairing IEP meetings, creating complete IEPs and more. One important responsibility is logging of therapy time for Medicaid eligible students. Because Medicaid is a healthcare initiative, SLSs must be certified by the American Speech-Language-Hearing Association (ASHA) or have equivalent certification, such as a NJ license from the Division of Consumer Affairs in Newark. There are required mandates for designing/logging plans for Medicaid students, detailed in NJ's SEMI Handbook, and logging of services on line takes a great deal of time. Medicaid brings in millions of dollars to New Jersey's schools and SLSs must have the time to proceed appropriately in order to maintain appropriate certification from the American Speech-Language-Hearing Association (ASHA) as well as licenses from the Division of Consumer Affairs in Newark.

Though mandated case management time may include time for testing ESLS students, it does not include time for testing ESERS students, who most often need language evaluations, which usually require extended time to

conduct. By including testing time in code, OSEPP would be helping SLSs work toward a workload approach as recommended by ASHA. (Please refer to <https://www.asha.org/practice-portal/professional-issues/caseload-and-workload/>) for information on this approach. NJSHA has had reports of caseloads as high as 85 to 100, which, coupled with other responsibilities, can make it impossible for SLSs to deliver appropriate, effective services. which are required for FAPE.

NJSHA is also aware that N.J.A.C. 6A:14-4.6 (d) stipulates, "The district board of education shall provide the teacher aide and the appropriate general or special education teaching staff time for consultation on a regular basis, which shall be set forth in policies adopted by the district board of education." Please confirm that "special education teaching staff" includes SLSs.

A second consideration that NJSHA suggests in the revision of Code concerns the classification of Communication Impaired (CI). The attached memo from the New Jersey Office of Special Education Programs (OSEP) highlights the confusion that strict criteria for this classification has caused. Intervening early is key, yet due to strict interpretation of CI criteria, a number of students who need intervention may not receive it until a later date, thus bypassing the positive effects of earlier treatment. Though the attached memo, which was sent to administrators, clarifies the issue and appears on the NJDOE website, it is not stated in code, and misinterpretation of the eligibility for CI continues. Some administrators have disregarded the memo, saying that it is not in code. Others have misinterpreted the memo to mean the opposite of its intent. Some may require total test scores or may not allow students not classified as CI to have the much needed related service of speech-language pathology (IDEA term) even in the case of autism. In fact, there was a case reported by a parent to NJSHA of a child with autism who was denied services when the family moved to a new district, which based whether or not the child had a disorder on language scores that were not appropriately analyzed.

NJSHA hopes the Board will consider changing the following citation, N.J.A.C. 6A:14-3.9 (a)

3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.

By deleting the final sentence, the need for students in other classification categories, such as Autism and SLD, to meet the same eligibility criteria for CI would be eliminated. It is our understanding that in other states, students diagnosed with a language impairment that is negatively affecting educational performance, can receive the related service of speech-language pathology without using restrictive criteria. The ASHA State Education Advocacy Leader (SEAL) representing New Jersey polled the ASHA SEAL list serve and of the 13 SEALs who responded, only five states had any standardized test criteria for language eligibility. However, four of those five states clearly specified alternative methods of assessment within those criteria, by stating use of standardized tests OR . . ., and some specifically stated that the deficit could be in receptive or expressive language. Addition of "receptive or expressive" in front of "language disorder" in "CI means a language disorder" (N.J.A.C. 6A:14-3.5 (c) 4.) would clarify that the impairment does not have to signify a total test score. One state added the term, oral discourse to the definition of a language disorder. IDEA requires a diagnosis of speech-language impairments by speech-language pathologists - 34CFR §300.34 (c) (15.) (i) and (ii). As opposed to test scores, the speech-language impairments that are negatively affecting educational performance and the need for special education and related services should be the basis for eligibility decisions in any category, including CI.

Furthermore, although it was not in New Jersey, a judge in Iowa ruled in favor of a family whose child had been denied special education classification. The decision stated that a state should not be using criteria so strict that

it causes a student to be significantly behind his or her peers before a district recognizes that the child has a disability. See <http://www.desmoinesregister.com/story/news/education/2017/07/19/judge-rules-iowa-department-education-must-reimburse-urbandale-family-private-tutoring/465444001/>

N.J.A.C. 6A:14-3.9 (a) states: *Related services including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services and speech-language services shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following: . . .*

The above regulation verifies our contention that "related services must be provided to a student with a disability when required for the student to benefit from the educational program." Interpretation of the requirement for students to meet the criteria of CI to receive speech-language services for language in an IEP appears to be in direct contradiction of this requirement.

Misinterpretation will most likely continue without further information conveyed in code.

Since intervening early is key and, in the long run, may lead to eligible students being dismissed sooner or needing less intervention, having criteria that is misinterpreted and misused will cost districts more money over time and will cause students to be denied FAPE.

The presence of a language disorder secondary to a primary disorder is possible and often probable. This is a frequent occurrence in disorders such as autism, hard of hearing, intellectual disability and specific learning disability, which are some classification categories that would require speech-language as a related service. It is inappropriate to use the criteria for CI with students who have other primary disabilities, yet many administrators insist on applying the same criteria and using total test scores. Although federal and state regulations require that teams "*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,*" teams and administrators often feel that if test scores are not at or worse than the required standard deviation or percentile, a student cannot become eligible, even if an SLS diagnoses a language impairment that is negatively affecting educational performance.

The changes above would also address the concern when students no longer warrant speech-language therapy as a related service. When students having other primary disabilities are classified CI, a difficult situation for dismissal of services may exist. For this reason, NJSHA asks that the dismissal of speech-language pathology as a related service under the classification of CI be addressed. NJSHA recommends a statement that when speech-language services are no longer warranted under the disabling condition of CI, the child study team be required to conduct a re-evaluation to determine if the child continues to be a child with a disability under a different disabling condition.

In addition to considering the above changes, NJSHA asks that the NJDOE implement a previous suggestion. Under N.J.A.C. 6A:14-3.5 (c) 4. "*Communication Impaired,*" please add the word "*phonology*" prior to the word "*morphology*" in the wording "a language disorder in the areas of "*phonology,*" morphology, syntax, semantics and/or pragmatics/discourse." The term phonology appears in other states' definitions of a language impairment because it is the first level of language. SLSs are significant professionals in the diagnosis of reading disorders and dyslexia, now defined in N.J.A.C. 6A:14, via tests of phonological awareness. NJSHA thanks you once more for this opportunity.