



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing Title 18A:

Special Education - Incorrect References in Statute

July 7, 2025

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary

This project was brought to the Commission's attention by the New Jersey Speech-Language-Hearing Association (NJSHA), an organization representing more than 1,100 speech-language pathologists, audiologists, and communication experts in the state.¹ A majority of its members work in schools providing speech-language services to the State's special education population.² The NJSHA suggested reviewing and updating specific statutes to ensure that parents, school personnel, and individuals seeking information about the special education process have access to accurate and current information.³

N.J.S. 18A:46-5.1,⁴ N.J.S. 18A:46-5.2,⁵ N.J.S. 18A:46-8,⁶ N.J.S. 18A:46-19.7⁷, and N.J.S.18A:46-19.8⁸ pertain to the evaluation of students for special education services and the delivery of those services. N.J.S. 18A:46-5.1 and N.J.S. 18A:46-5.2 refer to repealed regulatory sections, while N.J.S.18A:46-8, N.J.S.18A:46-19.7, and N.J.S.18A:46-19.8 utilize outdated titles for the services. Staff recommend amending these statutes as detailed in the attached Appendix to enhance clarity and consistency.

Statutes Considered

18A:46-5.1. Basic child study team services; provision by boards of education and state operated programs

Each board of education and State operated program shall separately or jointly with one or more boards of education or State agencies provide for basic child study team services. The basic child study team shall consist of a school psychologist, a learning disability teacher consultant and a school social worker, and for the purposes of evaluation and classification shall include pertinent information from certified school personnel making the referral. This information shall be considered in the evaluation and classification process as defined in N.J.A.C. 6:28-1.1 et seq.

The referring certified school personnel and the school principal, or his designee, may attend the classification conference as defined in N.J.A.C. 6:28-1.1 et seq. and participate in the classification decision.⁹

¹ See E-Mail from Jacy Lance, Director of Public Affairs for Porzio Governmental Affairs, to Laura C. Tharney, Executive Director, NJLRC, with attachment: August 27, 2024, Letter from Donna Spillman-Kennedy, NJSHA President (Aug. 27, 2024, 3:15 PM EST) (on file with the NJLRC).

² *Id.*

³ *Id.*

⁴ N.J. STAT. ANN. § 18A:46-5.1 (West 2024).

⁵ N.J. STAT. ANN. § 18A:46-5.2 (West 2024)

⁶ N.J. STAT. ANN. § 18A:46-8 (West 2024).

⁷ N.J. STAT. ANN. § 18A:46-19.7 (West 2024).

⁸ N.J. STAT. ANN. § 18A:46-19.7 (West 2025).

⁹ N.J. STAT. ANN. § 18A:46-5.1 (West 2024) (emphasis added).

18A:46-5.2. Participation by parent or guardian

Any decision by the basic child study team concerning the evaluation, classification and placement of a student shall include the full participation of that student's parents or guardian as prescribed under N.J.A.C. 6:28-1.1 et seq.¹⁰

N.J.S. 18A:46-8. Classification of children with disabilities

Each board of education shall provide for the examination and classification of each child residing in the district and identified pursuant to N.J.S. 18A:46-6, except that the board of education of a county vocational school district shall provide for the examination and classification of each child who is attending the county vocational school on a full-time basis and is identified pursuant to N.J.S. 18A:46-6. Such examination and classification shall be accomplished according to procedures prescribed by the commissioner and approved by the State board, under one of the categories identified in N.J.S. 18A:46-6. The examination and classification of such nonpublic school children shall be in a location determined by the local board of education of the district in which the nonpublic school is located and approved by the commissioner pursuant to rules and regulations promulgated by the State board.

The classification of a child with a communication impairment shall be made by the basic child study team and an approved speech correctionist or speech pathologist, without child study consultation. Such children shall be reported to the basic child study team.¹¹

N.J.S. 18A:46-19.7. Contracts for provision of services

A board of education may contract with an educational improvement center, an educational services commission or other public or private agency approved by the commissioner other than a church or sectarian school, for the provision of examination, classification and speech correction services required by this act. Prior to any change in the provision of these services, the board shall provide timely and meaningful consultation with appropriate nonpublic school representatives, including parents.¹²

¹⁰ N.J. STAT. ANN. § 18A:46-5.1 (West 2024) (emphasis added).

¹¹ N.J. STAT. ANN. § 18A:46-8 (West 2024) (emphasis added).

¹² N.J. STAT. ANN. § 18A:46-19.7 (West 2024) (emphasis added).

N.J.S. 18A:46-19.8 Cost of services; annual estimate; inclusion in budget; state aid

a. On November 5 of each year, each board of education shall report the number of nonpublic school children who attended a nonpublic school located within the district who were identified as eligible to receive examination, classification, and speech correction pursuant to this act during the previous school year. The number of these pupils requiring an initial evaluation or reevaluation for examination and classification shall be multiplied by \$990.73. The number of these pupils requiring an annual review for examination and classification shall be multiplied by \$297.06. The number requiring speech correction shall be multiplied by \$786.70. These products shall be added to determine the estimated cost for providing examination, classification, and speech corrections to nonpublic school children during the next school year. Each board of education shall report the number of nonpublic school children who attended a nonpublic school located within the district, who were identified as eligible for supplementary instruction services during the preceding school year. The number of these pupils shall be multiplied by \$752.41. This product shall be added to the estimated cost for providing examination, classification and speech correction services.¹³

* * *

Analysis

In 1994, Governor Whitman signed Executive Order 22 which directed the New Jersey Department of Education (NJDOE) to complete a comprehensive and thorough review of all current administrative regulations and identify those that were not necessary, promoted inefficiency or were overly prescriptive.¹⁴ These administrative regulations were referred to the State Board of Education for review.¹⁵ Governor Whitman also signed Executive Order 27 in 1994, which required all State agencies to limit regulation of federal and state programs and to justify any decision to adopt an administrative rule for a program established under federal law or state statute that exceeded the requirements of an existing federal standard.¹⁶

As a result of the Executive Orders, the NJDOE initiated a comprehensive review of special education rules, with the goal of improving special education programs by assuring a balance of flexibility and safeguards.¹⁷ The process spanned multiple years, with proposed new rules presented to the State Board of Education on August 7, 1996.^{18 19} The new regulations were

¹³ N.J. STAT. ANN. § 18A:46-19.8 (West 2025) (emphasis added).

¹⁴ Exec. Order No. 22 (Whitman) 26 N.J.R. 3783(a) (1994), available at <<https://nj.gov/infobank/circular/eow22.htm>>.

¹⁵ *Id.*

¹⁶ Exec. Order No. 27 (Whitman) 26 N.J.R. 4723(a) (1994), available at <<https://nj.gov/infobank/circular/eow27.htm>>; *Baer v. Klagholz*, 339 N.J. Super. 168, 181 (App. Div. 2001)

¹⁷ See E-Mail from Jacy Lance, Director of Public Affairs for Porzio Governmental Affairs attaching an August 27, 2024, letter from Donna Spillman-Kennedy, NJSHA President (Aug. 27, 2024, 3:15 PM EST) (on file with the NJLRC).

¹⁸ *Id.*

¹⁹ The major elements of the rules were reflected in a policy statement and provided for: flexibility in the functioning of the child study team, changes in the evaluation process, elimination of the categorical classification

codified at N.J.A.C. 6A:14-1.1 to -10.1, superseding and replacing the earlier special education regulations found at N.J.A.C. 6:28-1.1 to -12.1.²⁰

Now, N.J.A.C. 6A:14-1.1 et. seq. regulates how members of a child study team function in relation to referral, identification, evaluation, determination of eligibility, and the development of the individualized education program (IEP).²¹ N.J.S. 18A:46-5.1 and N.J. S. 18A:45-5.2, however, continue to reference N.J.A.C. 6:28-1.1 et seq. as guidance in defining the evaluation and classification process.

The NJHSA representative who raised this concern with the Commission noted that, for many individuals trying to navigate the complex special education system in New Jersey—including laypersons like parents and family members—the incorrect citation to N.J.A.C. 6:28-1.1 et seq. unnecessarily hampers their ability to access and understand the rules governing the numerous issues related to special education.²²

Additionally, the use of the term “speech correctionist” is no longer recognized by the NJDOE since the term was changed to “speech-language specialist” as reflected in the New Jersey Administrative Code Regulations.^{23 24} Replacing the term “speech correctionist” in N.J.S. 18A:46-8, N.J.S. 18A:46-19.7, and N.J. S. 18A:46-19.8 with the currently used terms “speech language specialist” and “speech language services” would support continuity within the Department and the field, ensuring consistency of terminology across the Department of Education.²⁵

Outreach

After the release of the Tentative Report by the Commission, Staff conducted outreach to knowledgeable and interested individuals and organizations, including: the New Jersey Department of Education (NJDOE); NJDOE-Office of Special Education; the New Jersey State Special Education Advisory Council; the New Jersey State Board of Education; the New Jersey Education Association (NJEA); the New Jersey Public Charter Schools Association; the New

system, a reduction in the number of special class types, establishment of class size limits, inclusion of all students with disabilities in statewide assessment, and incorporation of the separate rules regarding the plan to revise special education. *Baer v. Klagholz*, 339 N.J. Super. 168, 183 (App. Div. 2001)

²⁰ *Id.*

²¹ See E-Mail from Jacy Lance, Director of Public Affairs for Porzio Governmental Affairs attaching an August 27, 2024, letter from Donna Spillman-Kennedy, NJSHA President (Aug. 27, 2024, 3:15 PM EST) (on file with the NJLRC).

²² *Id.*

²³ N.J. ADMIN CODE § 6A:14-1.3 (defining “[s]peech-language specialist” [as] speech-language specialist or speech-language specialist-equivalent”).

²⁴ N.J. ADMIN CODE § 6A:9B-14.6 (providing the educational and certification requirements for a speech-language specialist).

²⁵ N.J. STAT. ANN. § 18A:46-19.4 (West 2025), utilizes the term “speech-language specialist” stating “[e]ach board of education shall provide for the services of a certified speech-language specialist for each child attending a nonpublic school located in the school district and classified pursuant to N.J.S. 18A: 46-8 as requiring the services of a certified speech-language specialist.”

Jersey State Audiology and Speech-Language Pathology Advisory Committee; the New Jersey Speech and Hearing Association (NJSHA); and the New Jersey State Bar Association.

The NJSHA agreed with the proposed revisions and suggested changing the term “speech correctionist” to “speech language specialist or speech pathologist” in N.J.S. 18A:46-8, as the currently recognized NJ Licensure title for this position is speech-language pathologist.²⁶

The NJ DOE supports the proposed revisions.²⁷ The New Jersey Public Charter Schools Association did not have any substantive comments to offer.²⁸

Pending Bills

A.B. 3436, introduced in the current legislative session (2024-2025) and referred to the Assembly Education Committee, amends N.J.S. 18A:46-5.1 to permit members of a basic child study team to be employed by an agency or clinic approved by the Department of Education.²⁹ The current regulation requires child study team members to be employees of a district board of education.³⁰ The proposed amendment also seeks to replace references to N.J.A.C. 6:28-1.1 et seq. with N.J.A.C. 6A:14-1.1.³¹ This bill is identical to bills introduced in consecutive legislative sessions from 2010 through 2024.³²

Conclusion

Staff proposes modification to (1) N.J.S. 18A:46-5.1 N.J.S. 18A:46-5.2 to replace the incorrect reference to N.J.A.C. 6:28-1.1 et seq. with a reference to N.J.A.C. 6A:14–1 et seq.; and (2) N.J.S.18A:46-8, N.J.S.18A:46-19.7, and N.J.S.18A:46-19.8 to replace the terms "speech

²⁶ See E-Mail from Robin M. Kanis., NJ Licensed Speech-Language Pathologist, NJSHA School Affairs Committee (SAC) Legislative Liaison to Barbara Rivera, Counsel, NJLRC (March 24, 2025, 4:14 PM EST) (on file with the NJLRC).

²⁷ See E-Mail from Samantha Price, Esq., Assistant Commissioner, Legal & External Affairs New Jersey Department of Education to Barbara Rivera, Counsel, NJLRC with attachment (June 2, 2025, 4:14 PM EST) (on file with the NJLRC).

²⁸ See E-Mail from Shanna Morgan, Director of Operations and Membership, New Jersey Public Charter Schools Association, to Barbara Rivera, Counsel, NJLRC, with attachment: May 23, 2025, Letter from Harry Lee, President & CEO New Jersey Public Charter Schools Association (May 23, 2025, 2:25 PM EST) (on file with the NJLRC).

²⁹ A.B. 3436, 221st Leg., 2024 Sess. (Feb. 2, 2024) This bill provides that a basic child study team may be comprised of employees of a school district or persons who are employed by an agency or clinic approved by the Department of Education to provide special education services to school districts. Under the bill, a member of a basic child study team must hold the appropriate certificate issued by the State Board of Examiners. Currently, State Board of Education regulation N.J.A.C.6A:14-3.1(b) requires child study team members to be employees of a district board of education.

³⁰ *Id.*

³¹ *Id.*

³² A.B. 3901, 220th Leg., 2022 Sess. (May 9, 2022) (identical to A.B. 3436); A.B. 2387, 219th Leg., 2020 Sess. (Feb. 3, 2020) (identical to A.B. 3436); A.B. 1127, 218th Leg., 2018 Sess. (Jan. 9, 2018) (identical to A.B. 3436); A.B. 1865, 217th Leg., 2016 Sess. (Jan. 27, 2016) (identical to A.B. 3436); A.B. 1403, 216th Leg., 2014 Sess. (Jan. 16, 2014) (identical to A.B. 3436); A.B. 4326, 215th Leg., 2012 Sess. (June 27, 2013) (identical to A.B. 3436); A.B. 3510, 214th Leg., 2010 Sess. (November 22, 2010) (identical to A.B. 3436).

correctionist" and "speech correction" with the updated terms "speech-language specialist" and "speech language" as noted in the Appendix.

Appendix

The proposed modifications to the existing New Jersey statutes are shown with underlining, for the addition of text, and ~~striketrough~~, to signify the removal of text, as follows:

18A:46-5.1. Basic child study team services; provision by boards of education and state operated programs

Each board of education and State operated program shall separately or jointly with one or more boards of education or State agencies provide for basic child study team services. The basic child study team shall consist of a school psychologist, a learning disability teacher consultant and a school social worker, and for the purposes of evaluation and classification shall include pertinent information from certified school personnel making the referral. This information shall be considered in the evaluation and classification process as defined ~~in N.J.A.C. 6:28-1.1 et seq.~~ by the New Jersey Administrative Code and currently codified in N.J.A.C. 6A:14-1.1 et. seq.³³

18A:46-5.2. Participation by parent or guardian

Any decision by the basic child study team concerning the evaluation, classification and placement of a student shall include the full participation of that student's parents or guardian as prescribed ~~under N.J.A.C. 6:28-1.1 et seq.~~ by the New Jersey Administrative Code and currently codified in N.J.A.C. 6A:14-1.1 et. seq.

Comment

The proposed modifications to N.J.S. 18A:46-5.1 and 18A:46-5.2 remove references to N.J.A.C. 6:28-1.1 et seq., which has been repealed, and replace it with language cross-referencing the accurate New Jersey Administrative Code provision at N.J.A.C. 6A:14-1 et seq. This proposal aims to clarify the rules that relate to the special education classification process.

N.J.S. 18A:46-8. Classification of children with disabilities

Each board of education shall provide for the examination and classification of each child residing in the district and identified pursuant to N.J.S. 18A:46-6, except that the board of education of a county vocational school district shall provide for the examination and classification of each child who is attending the county vocational school on a full-time basis and is identified pursuant to N.J.S. 18A:46-6. Such examination and classification shall be accomplished according to procedures

³³ The language referencing the New Jersey Administrative Code was suggested during the February 2025 Commission meeting and is intended to account for any future changes to the relevant Administrative Code provisions and address the “reference canon” of statutory interpretation. N.J. LAW REVISION COMM’N, *Minutes NJLRC Meeting*, February 20, 2025.

prescribed by the commissioner and approved by the State board, under one of the categories identified in N.J.S. 18A:46-6. The examination and classification of such nonpublic school children shall be in a location determined by the local board of education of the district in which the nonpublic school is located and approved by the commissioner pursuant to rules and regulations promulgated by the State board.

The classification of a child with a communication impairment shall be made by the basic child study team and an approved ~~speech-correctionist~~ speech-language specialist or speech-language pathologist, without child study consultation. Such children shall be reported to the basic child study team.

N.J.S. 18A:46-19.7. Contracts for provision of services

A board of education may contract with an educational improvement center, an educational services commission, or other public or private agency approved by the commissioner other than a church or sectarian school for the provision of examination, classification, and ~~speech-correction~~ speech-language services required by this act. Prior to any change in the provision of these services, the board shall provide timely and meaningful consultation with appropriate nonpublic school representatives, including parents.

N.J.S. 18A:46-19.8 Cost of services; annual estimate; inclusion in budget; state aid

a. On November 5 of each year, each board of education shall report the number of nonpublic school children who attended a nonpublic school located within the district who were identified as eligible to receive examination, classification, and ~~speech-correction~~ speech-language services pursuant to this act during the previous school year. The number of these pupils requiring an initial evaluation or reevaluation for examination and classification shall be multiplied by \$990.73. The number of these pupils requiring an annual review for examination and classification shall be multiplied by \$297.06. The number requiring ~~speech-correction~~ speech-language service shall be multiplied by \$786.70. These products shall be added to determine the estimated cost for providing examination, classification, and ~~speech-corrections~~ speech-language services to nonpublic school children during the next school year. Each board of education shall report the number of nonpublic school children who attended a nonpublic school located within the district, who were identified as eligible for supplementary instruction services during the preceding school year. The number of these pupils shall be multiplied by \$752.41. This product shall be added to the estimated cost for providing examination, classification and ~~speech-correction~~ speech-language services.

In preparing its annual budget, each board of education shall include as an expenditure the estimated cost of providing services to nonpublic school children pursuant to P.L.1977, c. 193 (C.18A:46-19.1 et al.).

In preparing its annual budget, each board of education shall include as a revenue State aid in an amount equal to the estimated cost of providing services to nonpublic school children pursuant to P.L.1977, c. 193 (C.18A:46-19.1 et al.).

During each school year, each district shall receive an amount of State aid equal to 10% of the estimated cost on the first day in September and on the first day of each month during the remainder of the school year. If a board of education requires funds prior to September, the board shall file a written request with the Commissioner of Education stating the need for the funds. The commissioner shall review each request and forward those for which need has been demonstrated to the appropriate officials for payment. In the event the expenditures incurred by any district are less than the amount of State aid received, the district shall refund the unexpended State aid after completion of the school year. The refunds shall be paid no later than December 1. In any year, a district may submit a request for additional aid pursuant to P.L.1977, c. 193 (C.18A:46-19.1 et al.). If the request is approved and funds are available from refunds of the prior year, payment shall be made in the current school year.

b. For the purposes of the report provided pursuant to subsection a. of this section, a board of education shall include a pupil enrolled in a nonpublic school located within the district who does not reside in the State in the number of pupils requiring an initial evaluation or reevaluation for examination and classification or requiring an annual review for examination and classification.

Notwithstanding the provisions of N.J.S.18A:46-6, N.J.S.18A:46-8, or any other section of law to the contrary, a school district may use State aid received pursuant to the provisions of P.L.1977, c. 193 (C.18A:46-19.1 et al.) for the initial evaluation or reevaluation for examination and classification or annual review for examination and classification of a nonpublic school pupil who is not a resident of the State.

Comment

The proposed changes to N.J.S. 18A:46-8, 18A:46-19.7 and 18A:46-19.8 eliminate references to "speech correctionist," and "speech correction", terms no longer recognized by the NJDOE. These phrases have been replaced with "speech-language specialist," and "speech language" which are also used in the New Jersey Administrative Code. Additionally, in N.J.S. 18A:46-8 the term "speech pathologist" has been changed to "speech-language pathologist" to reflect the correct title for this position for licensure under New Jersey statutes.³⁴ These modifications promote consistency of terminology within the Department of Education.

³⁴ N.J. STAT. ANN. § 45:3B-2(f) (West 2025).