

## *Regulations for Challenging Situations as an SLP*

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*The information in this program is provided for  
educational purposes. It is not meant to be  
specific recommendations  
nor legal advice.*

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## *Disclosures*

- Sue Goldman is receiving an honorarium for this presentation.
- Sue Goldman is on the NJSHA Board of Directors.
- Sue Goldman is a contributing author to the ASHA 2010 document, *Roles and Responsibilities of SLPs in Schools*, and to the New Jersey Technical Assistance Document, *The Evaluation of Speech and Language – fall 1999*.

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## *Roles and Responsibilities of Speech- Language Pathologists in Schools*

➤ *Position Statement*

<https://www.asha.org/policy/PS2010-00318/>

➤ *Professional Issues Statement*

<https://www.asha.org/policy/PI2010-00317/>

Available to members and non-members

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## *ASHA 2010 Document Roles and Responsibilities of SLPs in Schools*

- **Position Statement**
- **Professional Issues Statement**
  - **Critical Roles** - Working Across All Levels, Serving a Range of Disorders
  - **Range of Responsibilities** - Prevention, Assessment, Intervention
  - **Collaboration** - With Other School Professionals, With Families
  - **Leadership** – Advocacy, Research

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## *True or False*

When you work in a hospital, clinic or in private practice, you should be writing a diagnosis of delay, disorder or impairment into your report.

When you work in a school, you should be writing a diagnosis of delay, disorder or impairment into your report.

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## *34 CFR § 300.34 Related Services (Code of Federal Regulations 2006 for the Individuals with Disabilities Education Act (IDEA 2004))*

- (c) *Individual related services terms defined.*
- (15) *Speech-language pathology services includes—*
- (i) **Identification of children with speech or language impairments;**
  - (ii) **Diagnosis and appraisal of specific speech or language impairments;**
  - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

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*34 CFR § 300.34 (c) 15. (cont.)*

- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech

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*Three Prongs of Eligibility under IDEA*

1. Child must have a disability (no diagnosis; no disability)
2. The disability must negatively affect educational performance
3. The child must need special education and related services

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*True or False*

Independent Evaluation

If a parent is dissatisfied with the results of a school-based evaluation or reevaluation, that parent may request an independent evaluation, for which the district must pay.

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

(c) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at public expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees.

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

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*Implications for school-based SLPs*

- Be certain that your report is sufficiently thorough to support your diagnosis
- Be certain that you have used current tests
- Be certain that your team has made a decision of eligibility based on functional assessment as well as standardized testing
- If a student is classified Eligible for Special Education and Related Services (ESERS) under a category other than CI (e.g., Autism, SLD), be certain that you have advocated for speech-language pathology as a related service if needed to help a child succeed in special education
- Be aware that you may be called upon to testify

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*Implications for clinic/hospital/private based SLPs*

- Be certain that your report has functional information as well as standardized test information
- Observe the child in his class when doing an independent evaluation
- Be certain that you have used current tests
- Be familiar with school-based regulations (i.e., 34 CFR 300 Part B and N.J.A.C. 6A:14)
- Be aware that you may be called to testify if the situation is not resolved

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### 34 Code of Federal Regulations (CFR) § 300.304 Evaluation procedures.

(b) **Conduct of evaluation.** In conducting the evaluation, the public agency must—

(1) *Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—*

(i) *Whether the child is a child with a disability under § 300.8; and*

(ii) *The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);*

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### *What is the school district required to do when it receives an independent evaluation?*

The school district must consider any independent evaluation, including one a parent pays for, when making decisions regarding a child's special education program. However, the school district is not required to accept the evaluation report or incorporate any of its recommendations in a child's IEP. An independent evaluation may be presented as evidence at a due process hearing.

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### *According to wrightslaw.com*

*The biggest error independent evaluators make is **not** observing a child in a classroom. Independent evaluators should be allowed to do so by a district.*

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### *True or False*

Independent evaluators may not make recommendations when they submit an evaluation to a district, which was requested by a parent and paid for by the school district

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### *2004 Memo from NJDOE*

September 2004

TO:

Chief School Administrator

Director of Special Education

Administrator of a State Facility

Administrator of a Charter School

Administrator of an Approved Private School for the Disabled

Administrator of a College-Operated Program

Code Citation

N.J.A.C. 6A:14-2.5(c)

FROM: Barbara Gantwerk, Director, Office of Special Education Programs

[www.nj.gov/education](http://www.nj.gov/education)

SUBJECT: Code Clarification-Independent Evaluations

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### *2004 Memo (continued)*

N.J.A.C. 6A:14-2.5(c) provides that parents may request independent evaluations if they are not in agreement with the evaluation provided by a district board of education. All such independent evaluations are to be conducted pursuant to N.J.A.C. 6A:14-3.4. See, N.J.A.C. 6A:14-2.5(c)2.

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### *2004 Memo (continued)*

N.J.A.C. 6A:14-3.4(f) sets forth the requirements pertaining to the content of evaluation reports of school district personnel and, by reference, independent evaluators. Among these requirements are: that the report delineate the student's current functioning and an analysis of instructional implications; a statement regarding relevant behavior of the student; if the assessment is not conducted under standard conditions, the extent of any variation from standard conditions; and several additional requirements regarding determinations of whether a student has a specific learning disability. **These requirements necessitate that an evaluator offer professional opinions regarding educational performance and the instructional impact that may result from a student's disability. Likewise, opinions as to disability and conditions necessitating special education and related services may be offered.**

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### *2004 Memo (continued)*

In sum, evaluators providing independent evaluations may include recommendations as to specific educational and related services, methodologies, programs or placements in their reports, **as such recommendations are an appropriate component of an evaluation.**

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### *Recommendations*

- This memo seems to give credence to SLSs in districts to be able to make recommendations in their reports.
- Reed Martin, pioneering special education attorney, has stated that if a disability is found, it is the obligation of the professional to make recommendations concerning what should be done to help these students with disabilities.

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### *True or False*

If a parent provides an evaluation from a private SLP or clinical or hospital based SLP, the IEP team must follow the recommendations in the evaluation report.

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### *Private evaluations*

The IEP team must consider all reports from private evaluators furnished by parents. The SLS, along with the team, may choose to accept all or part of the report. If a required portion of an initial evaluation, such as an observation of the child in class, is missing from the private evaluation, that piece must be performed by someone on the team (preferably the SLS in my humble opinion).

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### *Private evaluations*

The amount of speech-language pathology services provided is a team decision with heavy weight from the SLS and must be based on each child's individual needs. Amount of services is an area in which I feel there is a difference between medical and educational speech-language pathology.

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### *Amount of Services*

Private SLPs usually see clients individually for a longer period of time per session (45 minutes) than school based SLPs. They may be bound by insurance regulations relative to amount of services and clients who do or do not qualify for services based on insurance.

School based SLPs often see children in small groups or individually. They should also be providing therapy in class when appropriate.

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### *Amount of Services*

Recommendations for amount of school based therapy must be based on each child's individual needs.

Recommendations for private therapy may be based on insurance or on expertise of SLP if the parent is paying out of pocket.

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### *Consider...*

The field of the SLP, regardless of workplace, is that of communication.

Communicate with other SLPs.

Get written permission to speak to another SLP or another professional involved with the student.

Many issues for the parent and practitioners may be cleared up via communication.

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### *True or False*

School based SLPs need not deliver the "Cadillac" of services.

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### *School based SLPs beware!*

**The Endrew case - 2017 (US Supreme Court)**

Trivial benefit is not enough; the IEP must be "reasonably calculated to enable a child to make progress in light of the child's circumstances."

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### *The Endrew case - 2017 (US Supreme Court)*

- This decision debunks the notion that schools do not need to deliver the Cadillac of services.
- This case provides another reason to support need for more frequency of services and smaller group sizes when data shows that a student is not progressing adequately

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### *Amount of Services*

Speech-language is a service necessary for the student to benefit from special education  
 + Special education must be delivered in the LRE  
 = SLP's job is to provide services that will enable the student to benefit from special education in the LRE

Consider Endrew case when prescribing services  
 FAPE may be violated if a student does not make progress.

SLPs beware – Take consistent data to help support frequency and duration of speech-language pathology services prescribed

### *1994 Federal Monitoring Report on NJ*

P. 20 FINDING 3: “SERVICES BASED ON AVAILABILITY OF SERVICE PROVIDERS”

“c. OSEP found that in six of the agencies visited related services were provided based on administrative convenience, rather than the unique needs of individual children.

(3) OSEP also found evidence that the determination of the amount of services a student with disabilities received was based on the availability of the related service provider.

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### FINDING 3: 3 c. (3) (continued)

In Agency F, a separate facility, the speech provider stated that the decision on the amount of service a child receives is based on the number of children the speech provider has to serve and number of contact hours she has available, not the individual needs of the children.”

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### *Action Required*

“1. Issue a memo to those public agencies in which OSEP identified deficient practices, requiring those agencies to discontinue the deficient practices. The public agencies must submit documentation that special education and related services are provided in accordance with an IEP, related services are provided based on individual need, not administrative convenience or the availability of qualified personnel, . . .”

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### *True or False*

Current federal monitoring for the *Individuals with Disabilities Education Act (IDEA)* is looking more at outcomes than compliance on paper

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### *Considerations*

- Data taken consistently and accurately has never been more important
- If a child is not making progress, as noted by data, a denial of FAPE may be present
- Data that shows little progress may support need for more speech-language pathology services or for use of evidenced based practice (EBP)

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## *Language Disorders*

In a school district, testing for mild language disorders can be performed by the SLS alone?

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## *N.J.A.C. 6A:14-3.5(c)4.*

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

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## *The Language Evaluation True or False*

Only two evaluations are needed for a language evaluation and one of them may be the social worker along with the SLS.

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## *Evaluation to establish educational impact*

Be certain that the social worker knows that s/he will be performing the assessment to establish the educational impact.

(N.J.A.C 6A:14-3.5 (c) 4.)

When the area of suspected disability is language, assessment by a certified speech-language specialist **and assessment to establish the educational impact are required.**

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## *N.J.A.C. 6A:14-3.3 (e) 4.*

*For students ages five to 21, when the suspected disability includes a language disorder, the child study team, the parent, a **speech-language specialist and the general education teacher of the student who has knowledge of the student's educational performance . . . shall participate in the meeting to decide whether to evaluate and the nature and scope of the evaluation.***

**(i.e., the SLS has input into the types of evaluations to be performed)**

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## *True or False*

Classification of ESLs for a language disorder can only be determined *after a child study team evaluation.*

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### ***N.J.A.C. 6A:14-3.6 Determination of eligibility for speech-language services***

(a) "Eligible for speech-language services" means a speech and/or language disorder as follows:

1. A **speech disorder in articulation, phonology, fluency, voice**, or any combination unrelated to dialect, cultural differences or the influence of a foreign language...and/or
2. A **language disorder which meets the criteria of N.J.A.C. 6A:14-3.5(c)4** and the student requires speech-language services only.

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### ***True or False***

The SLS does not need to attend the meeting to determine need for evaluation and the nature and scope of the evaluation for a preschooler or a potential language impaired student.

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### ***N.J.A.C. 6A:14-3.3 (e) 3.***

When a **preschool age child** is referred for an **initial evaluation**, a **speech- specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.**

- i. If it is determined that a **speech-language assessment will be conducted**, it may be utilized as assessments in N.J.A.C. 6A:14-3.4 **one of the two required (f).**

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### ***N.J.A.C. 6A:14-3.5 (c) 4.***

**"Communication impaired"** corresponds to "communication handicapped" and means a language disorder in the areas of morphology, syntax, semantics and/or pragmatics/discourse which adversely affects a student's educational performance and is not due primarily to an auditory impairment. . . . **The speech-language specialist shall be considered a child study team member.**

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### ***N.J.A.C. 6A:14-3.3 (e) 5.***

For students ages five to 21, **when the suspected disability is a disorder of voice, articulation and/or fluency only**, the decision to evaluate and the determination of the **nature and scope of the evaluation shall be according to (e) above**, except that the **meeting shall include the speech-language specialist, the parent and the general education teacher of the student who has knowledge of the student's educational performance....**

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### ***True or False***

Once a language evaluation is completed, it is not necessary for the SLS to attend the eligibility meeting for a potentially language impaired child.

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### **N.J.A.C. 6A:14-3.6 (c)**

When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting according to N.J.A.C. 6A:14-2.3(k)1. **The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services.** A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent not less than 10 calendar days prior to the meeting.

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### **True or False**

Since the SLP is a CST member for PSD and CI, s/he may act as case manager for these students

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### **Concerns**

#### **6A:14-3.2 Case manager**

(c) The case manager shall:

1. Be knowledgeable about the student's educational needs and program;
2. Be knowledgeable about special education procedures and procedural safeguards;
3. **Have an apportioned amount of time for case management responsibilities;** and
4. Be responsible for transition planning.

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### **ASHA Roles & Responsibilities of SLPs in Schools 2010**

#### **Range of Responsibilities**

##### **□ Assessment**

SLPs conduct assessments in collaboration with others that help to identify students with communication disorders as well as to inform instruction and intervention, consistent with EBP.

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### **Concerns (continued)**

My thoughts --- If the SLSs acts as case manager, s/he will need an apportioned amount of time to do so. If, for example, the LDTC case manages 35 students in five days, the SLS will need one day per 7 CST students that s/he case manages.

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### **True or False**

If a child is classified as Eligible for Special Education and related services (ESERS) under a classification other than CI, s/he has to meet exact testing criteria for CI or s/he cannot receive speech-language pathology services

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### Concerns

If the student, classified ESERS under a category **other** than CI (e.g., autism, hearing impaired), has a diagnosed language impairment and needs language therapy services to help him/her succeed in school, those services should be provided.

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### ASHA's Roles and Responsibilities Professional Issues Statement

**Critical Roles** - SLPs have integral roles in education and are essential members of school faculties .

#### –Ensuring Educational Relevance

The *litmus test* for roles assumed by SLPs with students with disabilities is **whether the disorder has an impact on the education of students**. Therefore, SLPs address personal, social/emotional, academic, and vocational needs that have an impact on attainment of educational goals.

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NJDOE CI Clarification Memo  
<http://www.state.nj.us/education/speciald/memos/100615Speech.pdf> retrieved  
10/15/17

**One example:** A child is diagnosed with a semantic pragmatic language disorder, which is negatively affecting him socially and academically. He has no friends and is having difficulty with critical thinking skills despite receiving scores in the average to above average range on standardized tests.

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### Functional Assessment

**It must be performed in other than a testing situation.\***

Usually best performed in the classroom.

**Observe student's response to language demands** of the classroom and academic language.

#### Does the student:

- Follow teacher's directions; understand questions in class; understand expository text being read?
- Respond appropriately to questions using correct and varied grammar?
- Give responses and/or use language that is simplistic?

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### Functional Assessment (continued)

#### Does the student:

- Have language weaknesses that are affecting reading and writing?
- Produce an age appropriate language sample (before age 5) or narrative (after age 5)?
- Have trouble reading new material and decoding unfamiliar words?
- Perform well on spelling tests but does not carry over spelling into writing tasks?

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### Functional Assessment (continued)

#### Does the student:

- Read nonsense words correctly?
- Have articulation error(s) noticeable to others?
- Present with misarticulations that affect reading and/or writing?
- Volunteer in class?
- Use a voice noticeably low in volume if called upon to respond?

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### *Does functional assessment help with diagnosis?*

Connect what was seen in the functional to formal test results.

(e.g., The fact that the student did not follow several directions given in class corroborated his deficits on a section on following directions during the formal testing.)

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### *Memo: Clarification of N.J.A.C. 6A:14 - 2015*

October 6, 2015

**TO:** Chief School Administrators  
Charter School and Renaissance School Project Lead Persons  
Directors of Special Education  
Administrators of a State Facility  
Administrators of an Approved Private School for Students with Disabilities  
Administrators of a College-Operated Program  
Statewide Special Education Advisory Council  
Agencies or Organizations Concerned with Special Education

**FROM:** Peggy McDonald, Executive Director  
Office of Special Education Programs

**SUBJECT:** Clarification of N.J.A.C. 6A:14-3.5(c)4

I am writing to provide clarification with respect to the criteria for determining whether a student is eligible to receive speech-language services from a speech-language specialist in accordance with N.J.A.C. 6A:14-3.5(c)4 and N.J.A.C. 6A:14-3.6(a). N.J.A.C. 6A:14-3.5(c)4 provides with respect to eligibility under communication impaired:

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### *Memo: Clarification of N.J.A.C. 6A:14 - 2015 (continued)*

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

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### *Memo: Clarification of N.J.A.C. 6A:14 - 2015 (continued)*

*"Communication impaired"* (continued)

- i. When it is determined that the student *meets the eligibility criteria* according to the definition *in (c)4* above, but *requires instruction by a speech-language specialist only*, the student shall be classified as eligible for speech-language services.
- ii. When the area of suspected disability is a *disorder of articulation, voice or fluency*, the student shall be evaluated according to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services according to N.J.A.C. 6A:14-3.6(a).

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### *Memo: Clarification of N.J.A.C. 6A:14 - 2015 (continued)*

In accordance with this regulation, when assessing for a language disorder for purposes of determining whether a student meets the criteria for communication impaired, the problem must be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, *where such tests are appropriate*, one of which shall be a comprehensive test of both receptive and expressive language.

When implementing the requirement with respect to *"standardized language tests, test selection for evaluation or reevaluation of an individual student is based on various factors, including the student's ability to participate in the tests, the areas of suspected language difficulties/deficits* (e.g., morphology, syntax, semantics, pragmatics/social language) and weaknesses identified during the assessment process which require further testing, etc.

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### *Memo: Clarification of N.J.A.C. 6A:14 - 2015 (continued)*

When implementing the requirement with respect to "standardized language tests," test selection for evaluation or reevaluation of an individual student is based on various factors, including the student's ability to participate in the tests, the areas of suspected language difficulties/deficits (e.g., morphology, syntax, semantics, pragmatics/social language) and weaknesses identified during the assessment process which require further testing, etc.

*With respect to test interpretation and decision-making regarding eligibility for special education and related services and eligibility for speech-language services, the criteria in the above provision do not limit the types of scores that can be considered (e.g., index, subtest, standard score, etc.).*

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***Memo: Clarification of N.J.A.C. 6A:14 – 2015  
(continued)***

Evaluators should review the pertinent examiners' manual to determine which scores to utilize to determine eligibility. Test analyses, presented with the functional assessment of language and information about the educational impact of the communication difficulties on the student's ability to be involved in academic, nonacademic, and extracurricular activities, assist in determining eligibility. In addition, *if it is determined that standardized tests are not appropriate for assessing whether a particular student has a language disorder, the individualized education program team may utilize other factors to make such a determination, such as relying on a functional assessment in other than a testing situation.*

I trust this information is helpful. Should you have any questions or require additional information, please contact John Worthington or Fran Leibner at 609-292-7602.

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***True or False***

When treating children, hospital based speech-language therapy is different than school-based speech language therapy.

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***Individual provider***

School based therapy should align with Common Core State Standards of the state and be curriculum based because the SLS' s job is to help children succeed in school.

There is no requirement for hospital based therapy to be curriculum based but since children are in school for most of their day during the school year, shouldn' t hospital based therapy facilitate ability to function in school?

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***To consider***

- All curriculum is language.
- In schools, children socialize with other students of various ages and teachers/adults.
- Functional evaluation of children' s comprehension of expository text, using their actual text books, truly helps in understanding a language disorder.

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***Medical vs. Educational SLPs***

- Hospital based SLPs may administer medical tests (e.g., barium swallow)
- Hospital based SLPs may use medical equipment (e.g., nasometer)
- Some school based SLSs may be trained in the above type of tests
- Hospital and school based SLPs may deliver treatment for language, articulation, voice, dysphagia, fluency
- Treatment by hospital and school based SLPs may or may not be effective dependent upon the individual client and SLP as opposed to the work setting

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***Medical vs. Educational SLPs***

- Medical and school based SLPs both perform assessments.
- For best results, a combination of standardized testing and functional information (dynamic assessment) should be used.
- Medical and school based SLPs both diagnose speech, language and swallowing disorders.
- Medical and school based SLPs should both use EBP techniques.

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### *True or False*

School based SLPs can only treat students who are having academic problems.

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### *Negative Effect on Educational Performance may be:*

1. **Academic** - Student may do poorly on, or avoid, oral presentations, assignments, and reading aloud. S/he may withdraw from group learning activities.
2. **Social-emotional** - Student may be teased by peers. Student may begin to avoid speaking in group settings. Student may be frustrated by speech or language disorder
3. **Vocational** – Student may have aspirations of working in a vocation in which s/he needs to express her/himself intelligibly, adequately and fluently.

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### *True or False*

Hospital based SLPs must show negative effect on educational performance in order to provide speech-language therapy for a school aged client.

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### *Consider*

Hospital based/private SLPs may see any client whom they have diagnosed with a speech, language or swallowing disorder (some decisions may be based on insurance) .

What about developmental articulation delays?

What about developmental language delays?

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### *True or False*

School based SLPs, who suggest that potential voice clients have an examination by an otolaryngologist, should tell parents that they have to use their own insurance to pay for the examination or the SLS should do therapy without the child having an examination.

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### *Ethical Considerations*

Beginning voice therapy without an otolaryngological evaluation **could prove harmful** and to do so would be **unethical**. It **could jeopardize an SLS 's ASHA certification** and his/her **NJ SLP license** from the Audiology and Speech-Language Pathology Licensing Board at the Division of Consumer Affairs. Remind administrators that these credentials are needed to sign off on Medicaid.

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### *Ethical Considerations*

#### **ASHA Principle of Ethics IV**

*Individuals shall uphold the dignity and autonomy of the professions, maintain collaborative and harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.*

#### **Rules of Ethics**

**B. Individuals shall exercise independent professional judgment in recommending and providing professional services when an administrative mandate, referral source, or prescription prevents keeping the welfare of persons served paramount.**

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### *Regulations*

In order for districts to ask parents to use their health insurance for a diagnostic evaluation, the district must obtain **"informed Consent"** in writing.

The SLS must tell the parents that the school will pay for the evaluation but that the parents may also choose to use their insurance to pay.

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### **N.J.A.C. 6A:14-2.5 PROTECTION IN EVALUATION PROCEDURES**

**(b) 3. The student is assessed in all areas of suspected disability;** i.e.,

If a student needs medical clearance to determine need for services for a voice disorder, the evaluation should go on the evaluation plan. Talk to your administrator about this need before it comes up.

If an evaluation to determine reason for hoarseness or any type of voice disorder, including use of nasometer for hypernasality, the evaluation should go on the evaluation plan.

**The district is NOT responsible for any medical treatment** recommended as a result of the evaluation (e.g., surgery for cleft or VPI or polyps), but they are responsible for related service of speech (voice) therapy to improve the resultant impairment.

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

*(a) Consent shall be obtained:*

*5. Each time a district board of education seeks to access private insurance covering a student with a disability;*

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

Further clarification – **2016 PRISE p. 7**

District may NOT require parents to use private insurance, but it may be used if written notice is provided and parent consents in writing

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### **PRISE (p. 7; 2016 booklet)**

*If you do not agree with a proposal to implement the initial IEP, access public insurance (such as Medicaid) or your private insurance covering your child, a request to excuse a required IEP team member from a meeting, a request to amend your child 's IEP without a meeting, or a request by your school district to waive the (three year) reevaluation of your child, the school district may not do what it is requesting. If you do not consent, the school district may not file for a due process hearing to ask an ALJ to provide consent for any of these types of requests.*

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## *Consider*

Federal and state regulations require that all areas of disability be assessed

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*Perform a thorough oral peripheral exam - place it on the evaluation plan; you may need to refer to an ENT or cranio facial center*



## *True or False*

All SLSs are qualified in the entire scope of practice of SLPs relative to diagnostics and treatment

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## *Regulations*

- Certified SLSs and SLS Equivalent holders are qualified to diagnose and treat speech-language impairments in schools
- Speech Corrections, who have not upgraded to the SLS equivalent certification, may no longer work in NJ public schools or private schools for children with disabilities
- Thus, in NJ schools, certified SLSs and SLS Equivalent holders can perform evaluations and deal with all communication goals in IEPs

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## *SLSs/SLPs in New Jersey*

- SLPs without a license from Newark cannot practice in private practice, hospitals, or clinics, even if they have CCC
- SLPs without CCC usually cannot practice in colleges/universities even if they have a license
- SLPs without an SLS, SLS Equivalent certificate or provisional certificate cannot practice in schools
- SLSs who have CCC and/or a license from Newark can practice in any of the above sites for which they are certified

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## *SLSs/SLPs Consider...*

- HOWEVER, if untrained in an area, such as dysphagia, they should not be evaluating or providing therapy
- Many, if not the majority, of SLSs have CCC and/or NJ license from the Division of Consumer Affairs in Newark
- Private SLPs, not trained in dysphagia, should not be delivering that type of therapy
- Other areas – AAC, voice, fluency, artic, language?

90

### *True or False*

SLPs should not be involved in the diagnosis or treatment of literacy impairments

91

### *Roles and Responsibilities of Speech-Language Pathologists With Respect to Reading and Writing in Children and Adolescents*

Position Statement

<https://www.asha.org/policy/PS2001-00104/>

92

### *Considerations*

- Reading is language based
- Articulation and/or language therapy at any site promote reading ability
- SLPs who know the phonological system intimately are well qualified to administer, score and interpret tests of phonological awareness
- SLSs who provide in-class therapy help with literacy

93

### *Considerations*

- In schools, SLSs can help with classification of reading disabilities
- States can no longer mandate that districts to use severe discrepancy formula to identify students as LD
- Response to Intervention (RTI)/multi tiered system of supports (MTSS) models are encouraged and must be given as a choice for eligibility considerations under SLD (in NJ – NJTSS)
- Objective is the prevention of disabilities whenever possible by intervening early
- However, a formal evaluation may be done when needed or requested or upon parent consent

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### *Tests of Phonological Awareness*

- *Comprehensive Test of Phonological Processing – 2 (CTOPP-2)*
- *Phonological Awareness Test-2*
- *Lindamood Auditory Conceptualization Test – 3 (LAC-3)*
- *The Names Test*
  - [http://departments.olatheschools.com/mtss/files/2012/07/namestestlevel1\\_2-abc.pdf](http://departments.olatheschools.com/mtss/files/2012/07/namestestlevel1_2-abc.pdf)
  - <http://catherinewilsonliteracyportfolio.wiki.westga.edu/file/view/The+Names+Test+Article.pdf/241037397/The+Names+Test+Article.pdf>

95

### *Use of PA Tests*

- SLPs can help teams support functional classification of children with reading disorders who do not meet discrepancy formula parameters
- SLPs can pinpoint specific needs to serve as goals for implementation of RTI
- SLPs in schools do not have to treat children with reading disorders but can help with appropriate implementation of phonemic awareness tasks
- SLPs in schools or other sites can treat PA if they have an expertise in that area
- SLPs in sites other than schools can make recommendations on a child's need for reading intervention

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### True or False

Every three years or when considering dismissal of a student in a school, an SLP must perform a complete evaluation.

98

### Re-evaluation

- **Meet to determine need for re-evaluation** – Meeting IS required. Formal or informal re-evaluation is not
- If IEP team concludes that **additional data are needed** to determine whether the student continues to be a student with a disability, **parents are provided with written notice of that determination**
- District must **obtain parent's signed consent** to conduct assessments for reevaluation.

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### Re-evaluation (continued)

#### Exception in 6A:14-2.3(a)3:6A:14-2.3(a)

#### Consent shall be obtained:

**3. Prior to** conducting any **assessment** as **part of a reevaluation**, except that such consent is **not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain such consent and the parent failed to respond.**

100

### Re-evaluation (continued)

#### N.J.A.C. 6A:14-3.8(b)

2. On the basis of that review, and input from the student's parents, the **IEP team shall identify what additional data, if any are needed to determine:**
  - i. **Whether the student continues to have a disability** according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

101

### Re-evaluation (continued)

#### N.J.A.C. 6A:14-3.8(b)

**3. If** the IEP team determines that **no additional data are needed to determine whether the student continues to be a student with a disability, the district board of education:**

- i. Shall **provide notice** according to N.J.A.C. 6A:14-2.3 to the student's parents of that determination and **the right of the parents to request an assessment** to determine whether the student continues to be a student with a disability; and
- ii. **Shall not be required to conduct such an assessment unless requested by the student's parents;**

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### Reevaluation (continued)

4. If additional data are needed, *the IEP team shall determine which child study team members and/or specialists shall administer tests and other assessment procedures* to make the required determinations in (b)2i through iv above.

Thus, the SLS **does NOT have to give 2 tests** and **does not have to administer another comprehensive test of receptive and expressive language.**

Instead, the SLS **can test to see what aspects of language** continue to be **weak** and what language aspects **need further therapy** or **need to begin to be addressed.**

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### Re-evaluation (continued)

At eligibility meeting, additional data/information is discussed along with all the information reviewed at the previous meeting, in order for the IEP team to reach consensus on continuing eligibility. That is all that is needed.

**A student does NOT need to meet initial eligibility criteria** again to **be considered eligible.**

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### Dismissal/Declassification

- A student classified ESLS may be declassified at an eligibility meeting held after the meeting to determine need for evaluation.
- A student classified CI or under any other category under ESERS, who is receiving SLP as a related service, may be dismissed at an annual review meeting if data shows that the service is no longer needed.
- However, NJSHA SAC recommends a formal eval including functional be completed prior to dismissing a student for language or fluency

105

### True or False

Following a reevaluation meeting, the SLS decides eligibility on his/her own.

106

### 34CFR § 300.306 Determination of eligibility.

(a) *General.* Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; . . .

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### Implications/Questions for the SLS

1. Must both receptive and expressive language be shown to be impaired to be eligible?
  - composite test scores
  - subtest score
  - discrepancies between scores
2. What happens if the comprehensive and expressive language test results fall within normal limits, but other tests do not?
  - where tests are appropriate
  - no one measure [N.J.A.C. 6A:14 2.5 (a) 2]
  - functional assessment – remember – **The way we use language in conversation is NOT the way we use language in learning**
  - think outside the box - **SLSs diagnose** language disorders based on diagnostic evaluations - **Team considers eligibility**
3. Does criteria outweigh other measures for eligibility?
  - i.e. functional assessment, informal measures,
  - where tests are appropriate

## Medicaid

The *SEMI Provider Handbook* (see Chapter 4 for specifics regarding SLP responsibilities and qualifications) can be downloaded at:  
[http://www.state.nj.us/treasury/administration/semi-mac/pdf/SEMIProviderHandbook\\_July2017\\_Final.pdf](http://www.state.nj.us/treasury/administration/semi-mac/pdf/SEMIProviderHandbook_July2017_Final.pdf)

## Medical Necessity

“ Medicaid may be broadly defined as a determination that a service is reasonable and necessary for the diagnosis and treatment of an illness or injury. (ASHA, 2004) An illness may also be defined as a disease or loss of bodily function. Hearing, speech, language and swallowing difficulties can all be considered a loss of bodily function. Therefore services to treat speech, language, swallowing, as well as hearing and balance disorders, meet the definition of medical necessity.”

## Claims must include

- “Date of service
- Name of recipient
- Medicaid identification number
- Name of provider agency
- Person providing the service
- Nature, extent, or units of service
- Place of service”

Deppe & Ireland 2011

## Medicaid – Who may sign off?

The NJ SEMI handbook states as quoted in italics below:

*Speech services (as of February 2011) provided to eligible students will be considered for Medicaid reimbursement when the services are provided by a practitioner who is:*

*A. Certified or endorsed by the Department of Education\* and holds an American Speech-Language-Hearing Association (ASHA) Certificate of Clinical Competence*

**OR**

*B. Certified or endorsed by the Department of Education\* and holds a valid license authorized by the State Audiology and Speech-Language Pathology Advisory Committee in accordance with New Jersey law at N.J.S.A. 45:3B-1 et seq.*

## True or False

If the SLS has CCC but no license from the Division of Consumer Affairs in Newark, s/he may refer to Medicaid after formally evaluating a child.

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## SEMI Provider Handbook July 2017

Evaluation/Referral for Speech Services

In New Jersey, in order to bill for speech-language services as documented in a student’s IEP, a student’s evaluation/IEP (Health-related evaluation services, as identified in Section B of this Handbook) must specify that speech services are recommended/ordered by a:

A. Licensed physician

- OR-

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***SEMI Handbook (continued)***

B. *Licensed practitioner of the healing arts within the scope of his or her practice under State law and holds a Department of Education\* certification as a Speech-language specialist (N.J.A.C. 6A:9B-14.6) who must provide documentation that identifies the referral of speech services that are included in or with the student’s IEP. An acceptable written referral can be the completed evaluation and results, which address the student’s communication problem and needs relative to speech-language services.*

115

***Licensure***

According to ASHA,  
 “Medicaid is a joint state-federal program so the state can require licensure.”

According to PCG  
 Licensure is not needed to work in a school district in NJ, but individual districts may require it. Why?

However, According to feds, Licensure IS needed to make a referral for Medicaid.  
 (should be made clear by PCG)

***“Under the Direction of”***

Definition re: SEMI Handbook – (quoted in italics below)

*The ASHA-certified or equivalent personnel:*

- *Maintains responsibility for the services delivered;*
- *Sees the student, at least, once; and periodically*
- *Provides input into the type of care provided;*

***“Under the Direction of”***

Definition (continued)

- *Monitors treatment status after treatment has begun;*
- *Meets regularly with the staff being supervised; and*
- *Is available to the supervised staff.*

(Significant time needed. What does “Sees” mean?)

***Suggestion to SLS***

**Suggestion** – “You can just sign off for your SLS colleague. There is no time for extra duties.”

**Concerns:** Following this directive puts me in jeopardy of ignoring regulations.

– **Actions to consider:**

Consult with local union, county uniserve office or personal attorney on implications of breaking a federal health care regulation.

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NEW JERSEY CLAIMED  
 HUNDREDS OF MILLIONS IN  
 UNALLOWABLE OR  
 UNSUPPORTED MEDICAID  
 SCHOOL-BASED  
 REIMBURSEMENT

November 2017

<https://oig.hhs.gov/oas/reports/region2/21501010.asp>

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## OIG found

(1) PCG improperly altered school employees' responses to time studies to indicate that their activities were directly related to providing Medicaid services when the responses indicated the activities were unrelated; (2) New Jersey improperly incorporated into its payment rates more than \$400 million owed to the school employees' pension fund despite not having made scheduled payments to the fund in nearly 20 years; and (3) salaries of some employees who did not provide health-related services were incorporated into the payment rates. In addition, New Jersey did not maintain documentation related to the time studies, which it used to identify the percentage of time personnel provided particular services.

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## OIG recommends

We recommend that New Jersey refund \$300.5 million in Federal Medicaid reimbursement claimed based on payment rates that incorporated unallowable costs, work with CMS to determine the allowable amount of the remaining \$306.2 million claimed for Federal Medicaid reimbursement, and revise its payment rates so they comply with Federal requirements.

New Jersey disagreed with our findings and recommendations. New Jersey also submitted a memorandum from PCG asserting that its methodology for setting rates was reasonable, appropriate, and in compliance with the law.

After reviewing New Jersey's comments and the PCG memorandum, we maintain our findings and recommendations are valid. Neither New Jersey nor PCG provided additional support for how the payment rates were calculated.

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## Previous OIG report 2010 found:

### SUMMARY OF FINDINGS

New Jersey's claims for reimbursement of Medicaid school-based health services submitted by PCG did not fully comply with Federal and State requirements. Of the 100 school-based health claims in our sample, 64 claims complied with Federal and State requirements. However, the remaining 36 did not.

Of the 36 noncompliant claims, 11 claims contained more than 1 deficiency:

- Sixteen claims lacked a referral or prescription.
- Sixteen claims did not meet Federal provider qualification requirements.
- Fourteen claims contained services that were not provided or supported.
- One claim contained services not documented in the child's plan.

123

## True or False

When employed by staffing companies, health care organizations or skilled nursing facilities, SLPs are obligated to proceed as directed even if the manner in which they are told to proceed may constitute fraud or a misrepresentation of services.

124

## Consensus Document - 2014

Written by ASHA, AOTA, APTA in response to member concerns about how in some health care settings, practices were implemented that were against the clinical judgment of practitioners, who did not feel these practices addressed patient needs.

The document concentrated on the support of judgment of clinicians in service delivery.

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## New consensus statement- 2016

Developed by ASHA and three other organizations

Designates what clinicians, who work in health settings, can do if they feel a possibility of violations of laws, regulations or policies exists where they are working.

The ASHA Leader, *News in Brief*,  
November 2016

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### *Skilled Nursing Practices against Medicare rules*

Direction that all patients should receive speech-language therapy, even if not needed

Adjusting therapy minutes and assigning therapy time that is impossible to complete in one day

Direction to decrease evaluation time, even when more documentation is needed and use 85% of time for treatment

Logging documentation time that is not face to face as evaluation or treatment time

*The ASHA Leader, On the Pulse,*  
March 2017

*SNFs Pay \$3.75 Million to Settle Contractor Fraud Allegations*  
*The ASHA Leader*, November 2014, Vol. 19, 12.  
doi:10.1044/leader.NIB3.19112014.12

“The settlement also resolves allegations that LCS and ParkVista failed to prevent other RehabCare practices designed to inflate Medicare reimbursement, including:”

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### *RehabCare policies that inflated Medicare Reimbursement*

- “Automatically assigning patients to the highest level of therapy services without evaluating each patient’s needs.
- Providing the minimum number of therapy minutes required to bill at the highest reimbursement level and discouraging amounts beyond that minimum threshold, despite Medicare requirements that the care provided be determined by patients’ clinical needs;.
- Arbitrarily shifting the number of minutes of therapy between therapy disciplines to ensure targeted reimbursement levels were achieved.
- Reporting estimated or rounded minutes instead of reporting the actual minutes of therapy provided.”

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## *ASHA Code of Ethics*

### *Effective March 1, 2016*

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### *Principal of Ethics IV*

#### *Rules of Ethics*

D. Individuals shall not engage in any form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

E. Individuals shall not engage in dishonesty, negligence, fraud, deceit, or misrepresentation.

131

### *True or False*

In order to appropriately determine eligibility, evaluations in all areas of suspected disability must be completed

132

### Case law

As with otolaryngological assessment, any area of suspected disability must be completed

Refer to:

<http://www.wrightslaw.com/law/caselaw/2001/9th.amandaj.clarkco.nevada.htm>

133

### N.J.A.C. 6A:14-2.5 PROTECTION IN EVALUATION PROCEDURES (b)

**3. The student is assessed in all areas of suspected disability;**

134

### True or False

To ensure that school based SLSs are prepared to work competently with their students, they have a right to pertinent professional development either on site or off.

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

(a) *Teacher preparation, district induction, professional development programs, and the school district teacher evaluation system shall align with the standards in (a)1 through 11 below. . . .*

**4. Standard Four: Content Knowledge.**

*The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches, particularly as they relate to the Common Core Standards and the New Jersey Core Curriculum Content Standards and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content.*

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### N.J.A.C. 6A:9-3.3 (continued)

ii. *Essential Knowledge:*

*(1) The teacher understands major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) he or she teaches;*

*(2) The teacher understands common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding*

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### ASHA's Roles and Responsibilities Professional Issues Statement

**Collaboration** — *SLPs work in partnership with others to meet students' needs .*

**With Students** — *Student involvement in the intervention process is essential to promoting personal responsibility and ownership of communication improvement goals. SLPs actively engage students in goal planning, intervention implementation, monitoring of progress, and self-advocacy appropriate to age and ability level.*

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### ASHA's Roles and Responsibilities Professional Issues Statement

**Range of Responsibilities** — SLPs help students meet the performance standards of a particular school district and state.

**Intervention** — SLPs provide intervention that is appropriate to the age and learning needs of each individual student and is selected through an evidence-based decision-making process. Although service delivery models are typically more diverse in the school setting than in other settings, the therapy techniques are clinical in nature when dealing with students with disabilities

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### ASHA's Roles and Responsibilities Professional Issues Statement

**Range of Responsibilities** — SLPs help students meet the performance standards of a particular school district and state.

**Compliance** — SLPs are responsible for meeting federal and state mandates as well as local policies in performance of their duties. Activities may include Individualized Education Program (IEP) development, Medicaid billing, report writing, and treatment plan/therapy log development.

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### True or False

A parent can withdraw consent for part of her/his child's IEP

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### Revocation of Consent

When you revoke consent, it is for all special education and related services. You may not revoke consent only for those services you do not wish your child to receive. If you have a disagreement with your district over specific services or the placement where the services are being provided, you should seek a meeting with the IEP team to discuss the services. If you and the other members of the team do not agree when you meet, you may use the dispute resolution procedures described later in this booklet to resolve the dispute.

(See: page 6 – 2015 **PRISE**  
[www.state.nj.us/education/specialed/form/prise/prise.pdf](http://www.state.nj.us/education/specialed/form/prise/prise.pdf),  
 booklet)

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*Thank you!*

*Questions?*

*The information in this program is provided for educational purposes. It is not meant to be specific recommendations nor legal advice.*

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