

Ethical Considerations for School-Based SLPs

The information in this program is provided for educational purposes. It is not meant to be any specific recommendation nor legal advice. In addition, information is meant for general knowledge purposes and is not to be considered recommendations for any specific situation. For legal advice, please consult an attorney

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Disclosures

Financial

Sue Goldman is receiving and honorarium for this presentation

Non Financial

Sue Goldman is a co-author of ASHA's 2010 *Roles and Responsibilities of SLPs in Schools*

Sue Goldman is co-author of the 1998 *New Jersey Technical Assistance Document, the Evaluation of Speech and Language*

- See <https://www.asha.org/Practice/ethics/BOE-Code-Enforcement/>
- <https://www.asha.org/Code-of-Ethics/>
- <https://www.asha.org/practice/ethics/code-of-ethics-2016-revision-summary/>
- <https://www.asha.org/policy/ET2016-00342/>
- <https://www.njconsumeraffairs.gov/regulations/Chapter-44C-Audiology-and-Speech-Language-Pathology-Advisory-Committee.pdf> subchapters 8 and 10
- Direct quotes found in this ppt from ASHA and other sources are in italics or quotes

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Five Moral Principles of Decision Making - considered the cornerstone of ethical guidelines

Respect Autonomy:

Individuals have the right to decide how they live their lives, as long as their actions do not interfere with the welfare of others. One has the right to act as a free agent, and has the freedom of thought and choice.

Do No Harm:

The obligation to avoid inflicting either physical or psychological harm on others may be a primary ethical principle.

Help Others:

There is an obligation to improve and enhance the welfare of others, even where such enhancements may inconvenience or limit the freedom of the person offering the assistance.

Be Just:

To be just in dealing with others assumes equal treatment of all, to afford each individual their due portion, and in general, to observe the Golden Rule

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Kitchner's theory is popular in education circles and influences many college student development programs

Be Trustworthy:

One should keep promises, tell the truth, be loyal, and maintain respect and civility in human discourse. Only in so far as we sustain faithfulness can we expect to be seen as being trustworthy.

Kitchener, K. S., (1984). Intuition, critical evaluation, and ethical principles: The foundation for ethical decisions in counseling psychology. *Counseling Psychologist*, 12, 43-55.

Kitchner observes that ethical principles are commonly in conflict with each other as we apply them to real-life ethical dilemmas. There are no absolutes. Since no one principle is absolute, there may be opportunities when a higher standard of ethical conduct might require violating one or more of these ethical principles. However, Kitchner notes that violating any of these principles, because they conflict with each other or because a "higher moral purpose" might be served places a strong responsibility on the individual to provide a reason for rejecting a principle.

Example of Ethical noncompliance

In 2008, a licensed practical nurse who pled guilty to wrongfully disclosing a patient's health information for personal gain faced a maximum penalty of 10 years imprisonment, a \$250,000 fine or both.

retrieved 2/4/20 from

<https://www.americanmobile.com/nursezone/nursing-news/nurse-pleads-guilty-to-hipaa-violation/>

Health Insurance Portability and Accountability Act of 1996 (**HIPAA**) - federal law health care
The Family Educational Rights and Privacy Act (**FERPA**) (20 U.S.C. § 1232g; 34 CFR Part 99) - federal law relative to the protection of privacy of student educational records.

When may school-based SLPs be under the realm of HIPAA?

**Terminology in ASHA's Code of Ethics
2 examples only**

- may vs. shall - *May* denotes an allowance for discretion; *shall* denotes no discretion.
- telepractice, teletherapy Application of telecommunications technology to the delivery of audiology and speech-language pathology professional services at a distance by linking clinician to client/patient or clinician to clinician for assessment, intervention, and/or consultation. The quality of the service should be equivalent to in-person service. For more information, see the telepractice section on the ASHA Practice Portal.

See NJSHA's COVID resources – Available to all

Possible Sanctions from ASHA Board of Ethics

- *Reprimand*: A formal rebuke or condemnation with limited disclosure.
- *Censure*: A public Reprimand with broad disclosure.
- *Withholding of membership and/or certification*: This public sanction prohibits future Association membership and/or certification for the period of time imposed. . . .
- *Suspension of membership and/or certification*: A public sanction that temporarily interrupts the Respondent's membership in and/or certification by the Association for the period of time imposed.
- *Revocation of membership and/or certification*: A public sanction that terminates the Respondent's membership in and certification by the Association for the period of time imposed. . . .

<https://www.asha.org/policy/Practices-and-Procedures-of-the-Board-of-Ethics/>

American Speech-Language-Hearing Association

Roles and Responsibilities of Speech-Language Pathologists in Schools

Professional Issues Statement

<https://www.asha.org/policy/pi2010-00317/>

Roles and Responsibilities of Speech-Language Pathologists in Schools

Position Statement

<https://www.asha.org/policy/ps2010-00318/>

Roles and Responsibilities of Speech-Language Pathologists in Schools

Practice Policy

<https://www.asha.org/slp/schools/prof-consult/guidelines/>

Complaints

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Read information about the following at
<https://www.asha.org/Practice/ethics/reflections/>

- **The Jurisdiction of the Board of Ethics Is Limited**
- **ASHA Cannot Provide Complainants With a Legal Remedy**
- **Complaints Filed With Retaliatory Intent Violate the Code**
- **Adhere to Filing Requirements for Appeals**
- **Petitioning for Reinstatement**

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Re: ASHA - *Many Ethics Complaints can be avoided*

The Board encourages individuals to make a good faith effort to solve ethical dilemmas through sound ethical decision making as problems arise—before they mature to a point of a violation mandating the filing of a complaint. However, ethical decision making in difficult situations can be challenging and some individuals do not know how best to do it. To assist members and certificate holders in making appropriate ethical decisions, ASHA Ethics has many resources available.

see <https://www.asha.org/Practice/ethics/reflections/>

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Medicaid and health care billing

R&R. 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.*

** Federal regulations trump state and district policy*

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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

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

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MEDICAID - 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.”

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Medicaid is under the purview of the Centers for Medicare and Medicaid Services (CMS), NOT education

Thus it is the obligation of those who sign off on Medicaid to follow CMS rules and guidance - See below

CMS issues various forms of guidance to explain how laws will be implemented and what states and others need to do to comply. In addition to regulations, CMS issues sub-regulatory guidance to address policy issues as well as operational updates and technical clarifications of existing guidance.

Source <https://www.medicaid.gov/federal-policy-guidance/index.html>

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True or False

If the SLS has CCC but no license from the Audiology and Speech-Language Pathology Advisory Committee within the Division of Consumer Affairs in Newark, s/he may evaluate and use that evaluation to refer a student to Medicaid.

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Signing off on Medicaid

- Must have CCC or equivalent to sign off for services
- What is equivalent to CCC and why?
- Must have NJ license in SLP to refer to Medicaid; CCC alone does not suffice

Source <https://www.state.nj.us/treasury/administration/semi-mac/pdf/SEMI-Provider-Handbook-FY20.pdf>

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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 chapter) must specify that speech services are recommended/ordered by a:

- A. Licensed physician
- OR
- B.

*Licensed practitioner of the healing arts within the scope of his or her practice under State law, authorized by the State Audiology and Speech-Language Pathology Advisory Committee in accordance with New Jersey law at N.J.S.A. 45:3-1 et seq., and holds a Department of Education*certificate as a Speech-language specialist (N.J.A.C.6A:9B-14.6)*

Semi Handbook, p. 28

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Evaluation and Referral (continued)

who must provide documentation that identifies the referral of 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. 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.

SEMI Handbook, p. 28

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Principles of Ethics IV - Rules of Ethics

R. Individuals shall comply with local, state, and federal laws and regulations applicable to professional practice, research ethics, and the responsible conduct of research.

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OIG Reports

- For reports with citations against NJ for false Medicaid claims, go to
 - <https://oig.hhs.gov/oas/reports/region2/20701052.pdf>
 - <https://oig.hhs.gov/oas/reports/region2/21501010.asp>

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Relation to Ethics

- NJ has been cited for Medicaid fraud on the referral issue. (on other issues also)
- The state, school district and/or PCG would be cited. SLS may or not but it is best to keep a written record (email or log) of explanation to administrator and PCG of why SLS could not refer if that SLP has Cs but no license
- SLS who refers must perform the evaluation and must have an NJ license

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Under the Direction of

If the district has speech providers who do not meet the Federal Medicaid regulations of a qualified speech provider (as outlined above), the district can choose to have the non-SEMI-qualified staff member “supervised” by an ASHA-certified or licensed speech provider for SEMI purposes. If a district chooses to utilize “under the direction”, the supervisee must meet minimum qualifications of full DOE certification. The supervisor must be SEMI-qualified and meet all Federal Medicaid regulations of a qualified speech-language pathologist.

Semi Handbook, p.29

District’s/Supervisor’s choice?
 NJ supervisor’s certificate; why not?

Time is needed for Under the Direction! What does each bullet entail?

When a speech-language specialist is working “under the direction,” Maintains responsibility for the services delivered;

- *Sees the student, at least, once, and periodically thereafter, as needed;*
- *Provides input into the type of care provided;*
- *Monitors treatment status after treatment has begun;*
- *Meets regularly with the staff being supervised; and*
- *Is available to the supervised staff. this means that the ASHA-certified or licensed personnel:*

Semi Handbook, p. 29

Suggestion made to SLS

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

Concerns: Following this directive puts SLS in jeopardy of ignoring CMS regulations, which would be unethical and could result in the loss of certification/license that enables signing off on Medicaid.

— ***Actions to consider:***

Consult with local union, county Uni Serv office or personal attorney on implications of breaking a CMS regulation. It would be interesting to call PCG and find out what they would say.

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.”

Employment Responsibility

Principle of Ethics I

Rules of Ethics

T. Individuals shall provide reasonable notice and information about alternatives for obtaining care in the event that they can no longer provide professional services.

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Adequate notice

- Leaving a job – not leaving clients without services – ample time to find a replacement
- In NJ schools - 60 day notice required before leaving a position or SLS certification can be lost
 - Your exit before 60 days would need to be reported to Office of Certification and Induction
- Regardless of setting, adequate notice must be given to clients before leaving a position
- OK to leave, if your position is filled before a 60 day notice in schools or quickly in another setting

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2018 ASHA Ethics Decision

Rationale: Did not use best practices in providing speech-language pathology services to students; documented services not provided, misrepresented the length of services provided, and failed to maintain appropriate and accurate records and documentation for services provided; and failed to provide services for multiple students for extended periods of time.

Code (2016): I, I-A, I-Q, IV, IV-D, IV-E

Sanction: Censure, effective Sept. 4, 2018

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Collaboration

Roles and Responsibilities of SLPs in Schools
<https://www.asha.org/policy/pi2010-00317/#sec1.2>

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

With Other School Professionals — *SLPs provide services to support the instructional program at a school. Therefore, SLPs' unique contributions complement and augment those made by other professionals who also have unique perspectives and skills. Working collegially with general education teachers who are primarily responsible for curriculum and instruction is essential. SLPs also work closely with reading specialists, literacy coaches, special education teachers, occupational therapists, physical therapists, school psychologists, audiologists, guidance counselors, and social workers, in addition to others. Working with school and district administrators in designing and implementing programs is crucial.*

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Principles of Ethics IV

Rules of Ethics

A. Individuals shall work collaboratively, when appropriate, with members of one's own profession and/or members of other professions to deliver the highest quality of care.

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**N.J.A.C. 6A:14-4.4 Program criteria:
 speech-language services (a)**

2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

Though SLPs should collaborate with ABA personnel, communication goals in schools must be delivered by SLS

N.J.A.C. 6A:14-3.9 Related services (a)

11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.

Supervisor may or may not be an SLP; however, CST and SLS should work with supervisors to define the appropriate services of ABA personnel as opposed to SLP services. SLS is in charge of communication goals.

*Evaluation
Reevaluation*

Evaluation/Reevaluation

It is important to comply with mandates in N.J.A.C. 6A:14, New Jersey’s Special Education Code, which is based on the federal *Individual with Disabilities Education Act (IDEA)*

How does the above contention relate to ethics?

Referrals for Language Evaluations

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.*

Re: Diagnosis vs. Eligibility
34 CFR §300.34 Related Services (c)

(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;
- (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 and language impairments.

Federal Register, August 14, 2006

Is the statement below valid?

Student X does not have a language disorder according to N.J.A.C. 6A:14-3.5 (c) 4.

Can a student have a language disorder in state A but it disappears in state B?

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Evaluations

SLSs must evaluate for potential language disorders along with the child study team (CST).

SLPs have the autonomy and responsibility to make a speech-language diagnosis.

Decisions on diagnosis of a language impairment are not based on state criteria

The IEP team must work together to decide eligibility.

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Reevaluation N.J.A.C. 6A:14-3.8

(b) *As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:*

1. *The IEP team shall review existing evaluation data on the student, including:*
 - i. *Evaluations and information provided by the parents;*
 - ii. *Current classroom based assessments and observations; and*
 - iii. *Observations by teachers and related services providers; and*
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:*

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N.J.A.C. 6A:14-3.8 (b) 2. continued

i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

ii. The present levels of academic achievement and functional performance and educational and related developmental needs of the student;

iii. Whether the student needs special education and related services, and the academic, developmental, functional and behavioral needs of the student and how they should appropriately be addressed in the student's IEP; and

iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

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

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.

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- What entity makes decisions about initial eligibility and continued eligibility?
- Must a student meet initial eligibility criteria on a reevaluation?
- Must a test of receptive/expressive language be administered for a reevaluation? (not an ethical consideration)

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Thus

- Though reevaluation and decision on continued eligibility are mandated every three years, a formal reevaluation is not required
- Current data and other measures may be used to determine eligibility at a reevaluation meeting
- Initial criteria do NOT have to be met on a formal reevaluation
- Ethical consideration - Does the student remain a child with a speech-language impairment and does s/he continue to need speech-language pathology services?

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Telepractice

Principle of Ethics I

Rules of Ethics K. M. N.

Principle of Ethics II

Rules of Ethics A. F.* G. H.**

*supervisors in NJ schools are often not SLPs

**Those using telepractice privately must be up to snuff in these areas

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Question that needs a response for non-emergency situation

- Relative to interprofessional relationships
 - Is it the responsibility of the SLP delivering telepractice to verify that the decisions to deliver services via telepractice were warranted and followed ASHA guidelines?

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Since COVID

- Telepractice regulations have been altered in some cases
 - Check ASHA website, NJSHA has links
 - New Jersey – allowing telepractice in schools for this emergency situation; will most likely not be allowed once out of the emergency so keep up with changes

R&R. 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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Principle of Ethics IV-Rules of Ethic

*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.**

*Example - writing telepractice into an IEP when directed but individual professional judgment disagrees. Course of Action?

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For all telepractice providers
 *for non-emergency situations
<https://www.asha.org/practice-portal/professional-issues/telepractice/>

*Because clinical services are based on the unique needs of each individual client, telepractice may **not** be appropriate in all circumstances or for all clients. Candidacy for receiving services via telepractice should be assessed prior to initiating services. The client’s culture, education level, age, and other characteristics may influence the appropriateness of audiology and speech-language services provided via telepractice.*

Consider the potential impact of the following factors on the client’s ability to benefit from telepractice:

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Client Selection - use of telepractice will be in IEP - be sure to consider all below

Physical and sensory characteristics, including

- hearing ability;
- visual ability (e.g., ability to see material on a computer monitor);
- manual dexterity (e.g., ability to operate a keyboard if needed); and
- physical endurance (e.g., sitting tolerance).

Cognitive, behavioral, and/or motivational characteristics, including

- level of cognitive functioning;
- ability to maintain attention (e.g., to a video monitor);
- ability to sit in front of a camera and minimize extraneous movements to avoid compromising the image resolution; and
- willingness of the client and family/caregiver (as appropriate) to receive services via telepractice.

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Client Selection (continued)

Communication characteristics, including

- auditory comprehension;
- literacy;
- speech intelligibility;
- cultural/linguistic variables; and
- availability of an interpreter.

Client's support resources, including

- availability of technology;
- access to and availability of resources (e.g., computer, adequate bandwidth, facilitator);
- appropriate environment for telepractice (e.g., quiet room with minimal distractions); and
- ability of the client, caregiver, and/or facilitator to follow directions to operate and troubleshoot telepractice technology and transmission.

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Is use of telepractice warranted?

What do you think is the most common situations in which telepractice services are delivered?

Why?

- shortages of clinicians
- mileage between schools in rural areas
- specializations needed
- Global pandemic!

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Administration in Schools in charge of telepractice services should

- ensure that telepractice clinicians (who may not reside in the state where the school is located) meet all state requirements to practice in the school;
- make certain that telepractice clinicians have knowledge, skills, and training in the use of telepractice;
- recognize that every student may not be best served by a telepractice model and give students the opportunity to receive traditional in-person services;
- inform parents that they have the right to decline telepractice services for their child;
- provide parents with an informed consent, satisfaction survey, or other feedback option and opportunities to discuss concerns about their child's progress or the telepractice program;
- document service delivery via telepractice on the Individualized Education Plan (IEP) and during the IEP meeting;

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Administrative responsibility (continued)

- *formulate policies that ensure protection of privacy during the services as well as documentation of the services;*
- *provide on-site support for the telepractice sessions, including the assignment of an individual to accompany the student to the session and provide support during the session;*
- *develop a plan for in-servicing staff, training on-site facilitators, and maintaining ongoing contact and collaboration with teachers, parents, and other school personnel—thereby ensuring that state standards are met; and*
- *develop a system of program evaluation to measure the effectiveness of the service and satisfaction of the stakeholders.*

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Is saving money a valid reason to use telepractice for all or most students?
Should SLSs in schools put telepractice in an IEP when directed to do so by administration?

- Again – telepractice issue is different for non-emergency situations during which employees are being paid their salaries and schools are not asking them to do telepractice to save money

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An urban school district in northern NJ planned on solving its shortage of SLSs by implementing telepractice in one school in the district

- Why was there a shortage?
 - District was unwilling to pay the going rate for SLSs, who were offered more pay from other districts in spite of the fact that there was a corrective action plan (CAP) from NJ OSEP requiring thousands of hours of missed services to be made up

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Advocacy

- SLSs from the district contacted NJSHA
 - NJSHA met with officials from NJ OSEP
 - Guidance memo on telepractice was distributed
- *Parents of the students who were not receiving services contacted the Education Law Center (ELC)
 - ELC made a complaint report
 - Investigation required a CAP
 - Parents reported issues with telepractice
 - ELC wrote to AIG to report that telepractice was not in N.J.A.C. 6A:14 and if memo prevailed, there would be a lawsuit
 - NJ OSEP rescinded the memo and telepractice never fell into place

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<https://www.nj.gov/education/broadcasts/2019/JUN/04/20166/Delivery%20of%20Related%20Services%20to%20Students%20with%20Disabilities%20Through%20Telepractice.pdf>

Pre-COVID information

The 2017 guidance has been rescinded. Effective September 1, 2019, speech-language services, occupational therapy, counseling, and home instruction shall not be provided through telepractice. Clinics and agencies will not receive approval from the Department of Education to provide these services through telepractice.

In the event an LEA, charter school, nonpublic school, or APSSD is unable to hire sufficient staff to provide related services, it may contract with a Department of Education approved clinic or agency to provide in-person related services.

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Cultural Competence

R&R. Critical Roles — SLPs have integral roles in education and are essential members of school faculties .

Providing Culturally Competent Services — *With the ever-increasing diversity in the schools, SLPs make important contributions to ensure that all students receive quality, culturally competent services. SLPs have the expertise to distinguish a language disorder from “something else.” That “something else” might include cultural and linguistic differences, socioeconomic factors, lack of adequate prior instruction, and the process of acquiring the dialect of English used in the schools. This expertise leads to more accurate and appropriate identification of student needs. SLPs can also address the impact of language differences and second language acquisition on student learning and provide assistance to teachers in promoting educational growth.*

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Cultural Competence

Culturally and linguistically competent services and research are addressed in ASHA’s 2016 *Code of Ethics*:

N.J.A.C. 6A:14-3.5

(b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading, including the essential components of reading instruction, or math or due to limited English proficiency.

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Principle of Ethics I
Rules of Ethics A. B. C.

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Cultural Misrepresentations
Language Difference vs. Language Impairment

1. Clairol introduced the “Mist Stick,” a curling iron, into Germany only to find out that ‘mist’ is slang for manure...not too many people had use for the manure stick.
2. The Dairy Association’s huge success with the campaign “Got Milk?” prompted them to expand advertising to Mexico. It was soon brought to their attention that the Spanish translation read: “are you lactating?”

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ASHA’s definitions

*The terms **culture** and **linguistics** refer to integrated patterns of human behavior that include language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or other groups (e.g., gender identity/gender expression, age, national origin, sexual orientation, disability).*

***Cultural and linguistic competence** is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations.*

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Thus

Service delivery for culturally/linguistically diverse clients is affected by the values and background of the provider. To provide competent care, service providers must respect and respond appropriately to a client’s values, preferences, and language. Quality care should be provided regardless of ethnicity, age, socioeconomic status, or other factors.

Source: *Issues in Ethics: Cultural and Linguistic Competence*
<https://www.asha.org/Practice/ethics/Cultural-and-Linguistic-Competence/>

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Principle of Ethics I - Rules of Ethics B.

Implication - if a professional feels unprepared to serve an individual on the basis of cultural and linguistic differences, then the option of an appropriate referral should be utilized.

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Referral in Schools?

- Certainly for an evaluation, especially if the child has limited English ability
- Therapy? - IEP team decision. If the team feels the child may be treated in English, the onus may be on the SLS to acquire the knowledge needed to treat the child
- Child with limited English would probably need coinciding ELL classes if an evaluation was completed by an SLS who was competent in the child’s language/ cultural orientation. The IEP team might decide need for an SLP to treat in first language

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NJDOE FAQs ELL

<https://www.nj.gov/education/bilingual/news/FAQse.htm>

11. *What do school districts need to provide when evaluating ELL students for special education services and providing special education and English language assistance services?*

School districts must ensure that ELLs who may have a disability, like all other students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and related services as required by federal and state regulations. When conducting such evaluations, school districts must consider the English language proficiency of ELLs in determining the appropriate assessments and other evaluation materials to be used. School districts must provide ELLs with disabilities with both the language assistance and special education and related services to which they are entitled. (20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300 (IDEA, Part B and its implementing regulations); 29 U.S.C. § 794 and 34 C.F.R. pt. 104 (Section 504 and its implementing regulations).

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Language tests in English used on EL students that may not be valid

CELF 4 - Spanish re: Barragin, Castilla, Earls, Martinez, Nieto, Restepo, Gray

PLS-4-Spanish – found to be not valid

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To deliver effective services

- Secure professional development in cultural/ linguistic diversity
- Research information on the student's culture
- Stay current on diversity issues.
- Ethics involved are not meant as a reason to deny services
- See https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589935230§ion=Key_Issues#Ethical_Considerations to read about Cultural Competence

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Learn

Resource from NJSHA's Multicultural Committee

<https://www.njsa.org/wp-content/uploads/CLDguide-1.pdf>

Teacher's College – Columbia University

<https://www.tc.columbia.edu/bilingual-institute/>

The other side of the coin

Do not defer evaluations for culturally linguistically diverse students, who present with the need for an evaluation for a potential disability, using the excuse that they speak another language or are different in other ways.

Principle of Ethics IV Rules of Ethics L.

Individuals shall not discriminate in their relationships with colleagues, assistants, students, support personnel, and members of other professions and disciplines on the basis of race, ethnicity, sex, gender identity/gender expression, sexual orientation, age, religion, national origin, disability, culture, language, dialect, or socioeconomic status.

80

Thus, ethics extend beyond client/SLP relationships

Discrimination on any bases (e.g., race, sex, gender, culture, socioeconomic status) in relationships with any persons contacted during a work situation would constitute a breach of ethics

81

Supervision

82

Principle of Ethics II

Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence and performance.

83

- Required by ASHA - one time two hour course in supervision
- To satisfy this requirement, can go to <https://www.asha.org/professional-development/supervision-courses/>
- Information in the ASHA courses *Nine Building Blocks to Supervision* and *Knowledge, Skills, and Competencies for Supervision* is what is required
- Check with ASHA to ask if either is ok or if both are needed
- The person I spoke to seemed to indicate that it would be best to take the ASHA on line course and would certainly need a course with all the information they have on line

84

Principle of Ethics II

Rules of Ethics

- D. To what would this relate?
- E. Few supervisors of SLPs who are SLPs in NJ but for those who are. . .
- F. Could apply to supervisors in rehab facilities?

85

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.

86

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.

87

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

88

***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

89

***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:”

90

Principle of Ethics III

Principle of Ethics IV
Rules of Ethics

B. Can anyone give an example?

R. Can you relate to code/IDEA, directives?

91

How does this relate to the schools

Must SLSs put needed evals on eval plan (e.g., swallowing, otolaryngologist)?

--consult NJ code citations

92

Amber needed someone to accompany her to the bathroom and assist with catheterization at least once each day. The school argued that this was a medical procedure which was beyond its responsibility as an educational agency. Amber’s counsel argued that the relatively simple service of catheterization was the only barrier between Amber and public school attendance. The Supreme Court established this standard: when (1) A service is necessary or the student will otherwise be barred from receiving an appropriate education and (2) the service can be provided by someone with less training than a physician, then the school must provide the service.

93

Principle of Ethics I

A. Individuals shall provide all clinical services and scientific activities competently.

What do you do if you are told “we don’t do dysphagia services” – do the research needed to advocate for child. Someone with knowledge must serve child if that is what it takes to enable the child to attend.

Martin , E., Martin, R. and Terman, 1996

Irving Independent School District v. Tatro
“The school must provide those related services that are essential for the child to have access to the school.”

94

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

(b) Each district board of education shall ensure:

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

Roles and Responsibilities Professional Issues Statement

Leadership. . .

Advocacy —

To assume productive roles, SLPs must advocate for appropriate programs and services for children and adolescents, including reasonable workloads, professional development opportunities and other program supports. Because some of the roles SLPs assume may be new or evolving and may not be clearly understood by others, SLPs have a responsibility to articulate their roles and responsibilities to teachers, other school professionals, administrators, support personnel, families, and the community. They also work to influence the development and interpretation of laws, regulations, and policies to promote best practice..

96

Professional Development

97

Principle of Ethics II

Rules of Ethics D.

98

Professional Development

- District is not allowing SLSs professional days to attend PD pertinent to the field of SLP
- District is not providing in house PD pertinent to the field of SLP
 - Appropriate solution?

99

Solution?

- Be familiar with NJ regulations, which are based on IDEA and the Every Student Succeeds Act (ESSA)

100

N.J.A.C. 6A:14-1.2

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

14. The in-service training needs for professional and paraprofessional staff who provide special education, general education or related services are identified and that appropriate in-service training is provided;

101

N.J.A.C. 6A:14-1.2 (b) 14. (cont)

i. The district board of education shall maintain information to demonstrate its efforts to:

(1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities;

(4) Insure that the in-service training is integrated to the maximum extent possible with other professional development activities; and

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Every Student Succeeds Act (ESSA)

- Continues to protect America's disadvantaged and high-need students
- Requires that high standard teaching will be provided for all students
- Ensures statewide assessments will measure achievement of high academic standards of all students and that educators, families, students, and communities will be informed of such success – reduces federal role in decisions
- Invests in high quality preschool
- Removes highly qualified provider mandate in NCLB – special ed teachers now must meet certification requirements in states

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ESSA

- Replaces *pupil services personnel* with *specialized instructional support personnel (SIPs)*
- ASHA feels the term SISP is a great accomplishment and will help SLPs and audiologists to acquire more appropriate professional learning opportunities
- Allows Alternate Achievement Standards for students with most significant cognitive disabilities (1%).
- ASHA doc on ESSA - <http://www.asha.org/uploadedFiles/Every-Student-Succeeds-Act-Key-Issues.pdf>

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ESSA

- Title II of ESSA requires meaningful consultation with SISP when states apply for federal funds to be given to school districts
- SLPs can take opportunity to advocate for participation in appropriate professional development programs since Title II funds for PD are available under ESSA

105

Be knowledgeable about New Jersey's PD requirements for teachers

Document need for appropriate professional development in your Professional Development Plan – base on impairments in caseload
 N.J.A .C. 9c-4.4 Requirements for and implementation of teachers' individual professional development plans

(a) Each teacher shall be guided by an individualized professional development plan (PDP), pursuant to N.J.S.A. 18A: 6-128.a, which shall include at least 20 hours per year of qualifying experiences. The 20-hour annual requirement shall be based on the length of full-time employment and reduced by a pro rata share reflecting part-time employment, or an absence, including the use of family or medical leave.

106

N.J.A.C. 6A:9-2.1 Definitions

“Teaching staff member” means as defined in N.J.S.A. 18

18A:1-1. Definitions

"Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

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Note: All regulations and some links change periodically. Regulations in this ppt are current as of the date of this presentation

PDF links:

<https://www.nj.gov/education/code/current/title6a/chap9.pdf>

<https://www.nj.gov/education/code/current/title6a/chap9a.pdf>

<https://www.nj.gov/education/code/current/title6a/chap9b.pdf>

<https://www.nj.gov/education/code/current/title6a/chap9c.pdf>

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N.J.A.C. 6A:9c

4.1 General Provisions

(c) Each district board of education shall ensure all teachers and school leaders receive the necessary opportunities, support, and resources to engage in ongoing professional learning and to complete the requirements of their respective professional development plans.

109

Appropriate professional development

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. The standards are grouped into the following four domains: The Learner and Learning (Standards One, Two, and Three); Content Knowledge (Standards Four and Five); Instructional Practice (Standards Six, Seven, and Eight); and Professional Responsibility (Standards Nine, Ten, and Eleven). The elements of each standard are divided into three categories: Performances, Essential Knowledge, and Critical Dispositions.

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

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 New Jersey Student Learning 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 (a) 4.

ii. Essential Knowledge:

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

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N.J.A.C. 6A:9--3.3 (a) 4.

Important citation!

iii. *Critical Dispositions:*

(1) *The teacher realizes that content knowledge is not a fixed body of facts but is complex, culturally situated, and ever evolving. He or she keeps abreast of new ideas and understandings in the field;*

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Continuing Education

- Extremely important – EBP, appropriate therapy methods
- NJ – Cont ed teacher requirement
 - Good to have familiarity with curriculum but advocate for appropriate continuing ed, which is mandated as cited above
 - Need for professional development in speech-language areas
 - NJ requires prof development for teachers - as noted in citations above, especially N.J.A.C 6A:9-3.3 (a) 4. iii. Critical Dispositions:

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Supporting need for Professional Development

- Student needs in caseload
- Need for appropriate professional development to maintain ASHA Cs and licensure
- ASHA Cs and/or licensure are needed for Medicaid purposes
- Ethical reasons - What are some?

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When completing PD Plan with Administrators, SLSs should . . .

- include discipline specific training that they will need in order to better service their students
- bring a copy of N.J.A.C. 6A:9-3.3. (a) 4.iii. (1) to support your need to stay current in the field
- explain to administrator specific PD will be needed and cannot be fulfilled by going to general school PD
- remind administrators that PD is also needed to satisfy need to keep current in order maintain certificates enabling SLSs to sign off on Medicaid and supervise recently graduated SLSs

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THANK YOU

*In memory of my friend and colleague,
Nancy J. Patterson, MA, SLP*



Nothing contained in this presentation should be construed as legal advice or as a recommendation of action for specific situations. Please consult with an attorney for issues of legal significance.

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