



STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: June 16, 2021
To: Chief School Administrators, Charter School and Renaissance School Project Leads, Administrators of Approved Private Schools for Students with Disabilities
Route To: Directors of Special Education
From: Kathy Ehling, Acting Assistant Commissioner
Division of Student Services

Additional or Compensatory Special Education and Related Services for Students with Disabilities: Recently Signed Legislation and Participation in Graduation Ceremonies

The purpose of this memorandum is to provide guidance to school districts, students, and parents/guardians of students with disabilities regarding the provision of additional or compensatory special education and related services for students with disabilities, particularly as it relates to the implementation of P.L.2021, c.109 (S-3434) and the participation of students with disabilities in graduation ceremonies.

P.L.2021, c.109 (S-3434)

This new State law requires boards of education to offer additional or compensatory special education and related services, including transition services, for a maximum of one additional year to students with disabilities following a determination made by the student's Individualized Education Program (IEP) team that the student requires such additional or compensatory special education and related services. This bill applies to students with disabilities who exceed, or will exceed, the current age of eligibility for special education and related services (21 years old) in the 2020-2021 school year, 2021-2022 school year, or the 2022-2023 school year. The school year runs from July 1 through June 30. The law makes clear that it is the role of the student's Individualized Education Program (IEP) team, which consists of the student, the student's parent/guardian, and the student's teachers, related service providers, and other representatives from the student's school district, to determine if the student requires additional or compensatory special education and related services.

The law does not guarantee that all students exceeding their eligibility will receive additional or compensatory services. Consistent with [Reopening Guidance](#) issued by the United States Department of Education (USED), the March 3, 2021 [NJDOE Compensatory Education Guidance](#), and relevant case law, the newly enacted law emphasizes the role of the student's IEP team in determining the individual student's need for compensatory education or services, as well as the type, frequency or location of those services.

The New Jersey Department of Education (NJDOE) acknowledges that the closing of school buildings, the shift to remote instruction, and the frequent changes in school schedules during the last 16 months due to COVID-19 may have impacted the services provided to students with disabilities. Enactment of this new state law ensures that students with disabilities who did not receive the services included in their IEPs¹ will receive additional or compensatory education if deemed necessary by the student's IEP team.

¹ The information contained in this memorandum is not intended to provide legal advice or to make determinations about the educational programs for students with disabilities. It is the role of the student's IEP team to develop, review, and revise student IEPs annually, or more often if necessary.

The student or student's parent/guardian may seek dispute resolution if there is disagreement with the IEP team's determination that the student does not require additional or compensatory education, or if there is disagreement about the IEP team's proposed type, frequency or location of additional or compensatory education. Dispute resolution options include mediation conferences, due process hearings, and/or complaints alleging a violation of special education law.

Ensuring the Participation of Students with Disabilities in Graduation Ceremonies

The NJDOE reminds school districts, students, and parents/guardians of students with disabilities of the rights afforded to students with disabilities under "[Alicia's Law](#)" at *N.J.S.A. 18A:7C-5.2*. Under Alicia's Law, **students with disabilities whose high school special education programs require instruction beyond four years must be permitted to participate in graduation ceremonies with their respective graduating class.**

Participation in graduation ceremonies does not preclude a student with a disability or the student's parent/guardian from seeking compensatory education or services if there is a belief that services were missed or not provided during the school year as required by the student's Individualized Education Program (IEP). Under the [NJ Special Education Regulations](#), students or parents/guardians of students with disabilities may request a due process hearing within two years of the date of the alleged actions that form the basis for the due process hearing request.

It is the role of the IEP team to determine the type, amount, frequency, duration, and location of the compensatory education and services necessary to address lack of progress toward IEP goals and objectives resulting from missed services. On March 3, 2021 the NJDOE issued [Compensatory Education Guidance](#) to assist school districts, students, and parents/guardians of students with disabilities in making determinations about the need for compensatory education as result of COVID-19.

Additional information about dispute resolution is available on the NJDOE [Special Education webpage](#). More information about the impact of COVID-19 on students with disabilities is available on the NJDOE's [COVID-19 webpage](#).

c: Members, State Board of Education
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