

SENATE, No. 905

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 27, 2022

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Extends period of time for filing special education due process petitions related to COVID-19 school closures and periods of virtual, remote, hybrid, or in-person instruction.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning special education due process hearings and
2 supplementing chapter 46 of Title 18A of the New Jersey
3 Statutes.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. a. Notwithstanding the provisions of the “Individuals with
9 Disabilities Education Act,” 20 U.S.C. s.1400 et seq., chapter 46 of
10 Title 18A of the New Jersey Statutes, regulations promulgated
11 thereto, and any other law, rule, or regulation to the contrary, a
12 request for a due process hearing made by a parent, guardian, or
13 local educational agency regarding the identification, evaluation,
14 educational placement, or the provision of a free and appropriate
15 public education of a child with a disability during a COVID-19
16 school closure or a period of virtual, remote, hybrid, or in-person
17 instruction accruing between March 18, 2020 and September 1,
18 2021 may be filed at any time prior to September 1, 2023.

19 b. A local educational agency shall, not later than December 31,
20 2022, or earlier if requested by a parent or guardian, hold an
21 Individualized Education Program (IEP) team meeting to discuss the
22 need for compensatory education and services for every student with a
23 disability who had an IEP at any time between March 18, 2020 and
24 September 1, 2021. Notification of the IEP meeting shall indicate that
25 a purpose of the meeting is to discuss the need for compensatory
26 education and services for the period from March 18, 2020 to
27 September 1, 2021. Following the meeting, written notice shall be
28 provided to a parent or guardian in accordance with N.J.A.C.6A:14-1.1
29 et seq. and shall indicate all determinations made by the IEP team with
30 respect to the need for and, if applicable, the provision of,
31 compensatory education and services. All compensatory education
32 and services deemed appropriate by the IEP team, including their
33 frequency, duration, location, and agreed upon time period for
34 delivery, shall be documented in an IEP in accordance with the
35 provisions of N.J.A.C.6A:14-1.1 et seq. and provided as indicated
36 therein. A parent or guardian may file for a due process hearing at any
37 time, up to and including September 1, 2023, to challenge the
38 determinations of the IEP team if the parent or guardian disagrees with
39 the determinations.

40 c. If a local educational agency has held an IEP team meeting
41 prior to the effective date of this act and discussed the need for
42 compensatory education and services for a student with a disability
43 who had an IEP at any time between March 18, 2020 and September 1,
44 2021, and documented the IEP team’s determinations pursuant to
45 subsection b. of this section, the local educational agency shall not be
46 required to hold an additional IEP meeting for purposes of this section
47 unless agreed to by a parent or guardian and the local educational
48 agency. A parent or guardian may file for a due process hearing at any

1 time, up to and including September 1, 2023, to challenge the
2 determinations of the IEP team.

3 d. If a parent or guardian filed for mediation or a due process
4 hearing with respect to the need for compensatory education and
5 services for a student with a disability who had an IEP at any time
6 between March 18, 2020 and September 1, 2021, and the matter was
7 resolved as a result of the mediation or a settlement agreement
8 executed by the parties or a judicial or administrative order, then the
9 parent or guardian shall be barred from filing the same claims for the
10 same time period addressed in the prior filing.

11 e. The provisions of this section shall not apply to any student
12 subject to the provisions of P.L.2021, c.109 (C.18A:46-6.3), and all
13 claims for compensatory or additional services for the time period
14 from March 18, 2020 through September 1, 2021 for students subject
15 to the provisions of P.L.2021, c.109 (C.18A:46-6.3) shall be addressed
16 pursuant to the provisions of P.L.2021, c.109 (C.18A:46-6.3).

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18 2. This act shall take effect immediately and shall be
19 retroactive to March 18, 2020.

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STATEMENT

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24 This bill extends the period of time a parent, guardian, or local
25 educational agency has to request a due process hearing regarding the
26 education of a child with disabilities during a COVID-19 school
27 closure or during periods of virtual, remote, hybrid, or in-person
28 instruction.

29 Under the “Individuals with Disabilities Education Act” (IDEA), a
30 parent or local educational agency may request an impartial due
31 process hearing when there is a disagreement regarding the
32 identification, evaluation, or educational placement of a child with
33 disabilities, or the provision of a free and appropriate public education.
34 An impartial due process hearing is required to be requested by a
35 parent, guardian, or local educational agency within two years from
36 the date the parent, guardian, or agency knew, or should have known,
37 about the alleged action that forms the basis for the complaint. The
38 IDEA permits each state to set its own time limitations for requesting a
39 hearing. Similar to the timeline set by the IDEA, State regulations
40 provide that a party has two years from the date a party knew, or
41 should have known, about the alleged action that forms the basis for
42 the complaint to file a petition for a due process hearing.

43 This bill would allow a parent, guardian, or local educational
44 agency to file a request for a due process hearing regarding the
45 identification, evaluation, educational placement, or the provision of a
46 free and appropriate public education of a child with a disability
47 during a COVID-19 school closure or a period of virtual, remote,

1 hybrid, or in-person instruction occurring between March 18, 2020 and
2 September 1, 2021 at any time prior to September 1, 2023.

3 Under the bill, a local educational agency is required, not later than
4 December 31, 2022, or earlier if requested by a parent or guardian, to
5 hold an IEP team meeting to discuss the need for compensatory
6 education and services for every student with a disability who had an
7 IEP at any time between March 18, 2020 and September 1, 2021. The
8 bill provides that a parent or guardian may file for a due process
9 hearing at any time, up to and including September 1, 2023, to
10 challenge the determinations of the IEP team if the parent or guardian
11 disagrees with the determinations.

12 Under the bill, if a local education agency has held an IEP team
13 meeting prior to the effective date of the bill and discussed the need
14 for compensatory education and services for a student with a disability
15 who had an IEP at any time between March 18, 2020 and September 1,
16 2021, and documented the IEP team's determinations as required by
17 the bill, the local educational agency is not required to hold an
18 additional IEP meeting pursuant to the provisions of the bill, unless
19 agreed to by a parent or guardian and a local educational agency.

20 The bill bars a parent or guardian who filed for mediation or a due
21 process hearing with respect to the need for compensatory education
22 and services for a student with a disability who had an IEP at any time
23 between March 18, 2020 and September 1, 2021 from filing the same
24 claims for the same time period addressed in that filing if the matter
25 was resolved as a result of the mediation or a settlement agreement
26 executed by the parties or a judicial or administrative order.

27 The provisions of the bill do not apply to any student subject to the
28 provisions of P.L.2021, c.109 (C.18A:46-6.3). All claims for
29 compensatory or additional services for the time period from March
30 18, 2020 through September 1, 2021 for students subject to the
31 provisions of P.L.2021, c.109 (C.18A:46-6.3) shall be addressed
32 pursuant to the provisions of P.L.2021, c.109 (C.18A:46-6.3).