



STATE OF NEW JERSEY

DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: April 20, 2022
To: Local Education Agency Leads, Administrators of Approved Private Schools for Students with Disabilities
Route To: Directors of Special Education
From: Kathy Ehling, Assistant Commissioner
Division of Educational Services

Implementing P.L. 2022, c.2: Extending the Period of Time a Parent, Guardian, or Local Educational Agency Has to Request a Special Education Due Process Hearing

The purpose of this memorandum is to provide guidance to local education agencies (LEAs), students, and parents/guardians of students with disabilities regarding implementation of P.L. 2022, c.2, which temporarily extends the period of time to file a due process hearing request to address special education and related services provided during March 18, 2020, through September 1, 2021.

Overview of P.L.2022, c.2

In March 2022, Governor Murphy signed P.L. 2022, c.2, which extends the period of time a parent, guardian, or LEA has to request a due process hearing regarding the education of a child with disabilities during a COVID-19 school closure or during periods of virtual, remote, hybrid, or in-person instruction. Under the law, a parent, guardian, or LEA may file a due process request to address special education and related services provided between March 18, 2020, and September 1, 2021, at any time up to and including September 1, 2023.

Additionally, the law requires each LEA to hold an Individualized Education Program (IEP) team meeting by December 31, 2022, for every student with a disability who had an IEP between March 18, 2020, and September 1, 2021, to discuss the need for compensatory services. The IEP must include discussions of the need for compensatory services and, when appropriate, the nature and scope of the compensatory services to be provided. In addition, written notice provided to parents or guardians after the IEP team meeting must address compensatory services. If an IEP meeting was held prior to the enactment of P.L. 2022, c.2 and the resulting IEP documents the discussion of compensatory services, the LEA is not required to convene another IEP meeting to meet the requirements of this law. Additionally, the IEP meeting required by P.L. 2022, c.2 may be held as part of the student's annual review, or as part of an IEP meeting convened to discuss various topics so long as the meeting includes the required discussion regarding the need for compensatory services and subsequent written notice.

Determining the Need for Compensatory Services

It is the role of the student's IEP team, which consists of the student, the student's parent/guardian, 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 IEP team is responsible for determining the type, frequency, and location of compensatory special education and related services and for documenting this information in the student's IEP.

Students who were the responsibility of the LEA during the time period addressed in this law, March 18, 2020, through September 1, 2021, and have since graduated, are entitled to consideration of compensatory services.

The LEA should make reasonable efforts to contact these students and schedule a meeting to discuss the need for compensatory services. LEAs should maintain documentation of attempts to conduct these meetings.

There may be instances where the LEA the student is currently attending is not the LEA that was responsible for the provision of special education and related services during the time period addressed in this law, March 18, 2020, through September 1, 2021. It is the responsibility of the LEA the student is currently attending to hold the required IEP meeting and discuss the need for compensatory services. LEAs may want to consider the following suggestions when preparing for and holding IEP team meetings to discuss compensatory services as required by P.L. 2022, c.2:

- Review available student data from March 18, 2020, through September 1, 2021, along with current data to identify gaps in learning or regression that may be best addressed through the provision of compensatory services;
- Consider inviting a representative from the LEA that provided special education and related services from March 18, 2020, through September 1, 2021, to the IEP meeting where compensatory services will be discussed; and,
- Consider a pre-meeting with the parents to discuss the impact of virtual and hybrid instruction from March 18, 2020, through September 1, 2021, on skill acquisition, retention, and learning gaps.

Dispute Resolution

Under P.L. 2022, c.2, the student or student's parent/guardian may file a request for a due process hearing at any time up to and including September 1, 2023, to challenge the determinations made by the IEP team.

Parents/guardians who participated in dispute resolution to address claims regarding the provision of special education and related services provided from March 18, 2020, to September 1, 2021 **and** reached resolution through a mediation agreement, settlement agreement or due process hearing may not file again regarding the initial claims.

P.L. 2021, c.109 and P.L. 2022, c.2

The provisions of the bill do not apply to any student subject to the provisions of P.L.2021, c.109, which allows for the provision of additional or compensatory services to students who will age out (turn 21) at the conclusion of the 2021-2022 and 2022-2023 school years. The consideration of the need for additional and compensatory services for learning interruptions due to COVID-19 from March 18, 2020, through September 1, 2021, the provision of said services, and reimbursement for services provided, are addressed through P.L. 2021, c.109.

Questions about P.L. 2022, c.2 should be directed to oseinfo@doe.nj.gov.

c: Members, State Board of Education
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NJDOE Staff
Statewide Parent Advocacy Network
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