

Via Electronic Mail Only

September 27, 2022

Assistant Commissioner Kathleen Ehling
New Jersey Department of Education
100 River View Plaza
Trenton, NJ 08625

Re: Implementation of N.J.S.A. 18A:46-1.3

Dear Assistant Commissioner Ehling:

In a Broadcast Memorandum dated April 20, 2022, you advised LEAs of their obligations under P.L. 2022, c. 2 (hereinafter referred to as N.J.S.A. 18A:46-1.3) enacted in March 2022, which temporarily extended the period of time to file a due process hearing concerning special education and related services provided during the period between March 18, 2020 and September 1, 2021. An essential component of N.J.S.A. 18A:46-1.3 was that each local educational agency (LEA) must hold Individualized Education Program (IEP) team meetings - by December 31, 2022 or earlier if requested by a parent or guardian - to discuss the need for compensatory education and services for every student who had an IEP between March 18, 2020 and September 1, 2021. In addition, notification of the IEP meeting must indicate that a purpose of the meeting is to discuss the need for compensatory education and services. Following the required IEP meeting, the LEA must also send written notice to parents or guardians in accordance with N.J.A.C. 6A:14 and shall indicate in the notice all determinations made by the IEP team with respect to the need for and, if applicable, the provision of compensatory education and services. Finally, N.J.S.A. 18A:46-1.3 requires that all compensatory education and services deemed appropriate by the IEP team, including their frequency, duration, location, and agreed upon time period for delivery, shall be documented in the IEP.

On behalf of New Jersey Special Education Practitioners (NJSEP), a group of over one hundred attorneys and advocates representing parents in special education matters, and Education Law Center (ELC), a leading advocate for New Jersey public school children, I am writing to request information about the New Jersey Department of Education's (NJDOE) monitoring of the implementation of N.J.S.A. 18A:46-1.3 and to express concerns based on information NJSEP and ELC have gathered in the field.

Pursuant to N.J.A.C. 6A:14-9.1, NJDOE is responsible for monitoring all special education programs for compliance with New Jersey statutes, including those provisions newly enacted in response to COVID-19 school closures. In this regard, we would appreciate your response to the following questions:

1. Beyond issuing the April 20, 2022 Memorandum, what has NJDOE done to ensure that LEAs comply with the requirements of N.J.S.A. 18A: 46-1.3?
2. What data has been collected by NJDOE to document compliance by LEAs with N.J.S.A. 18A:46-1.3, including its written notice requirements?
3. The Broadcast Memorandum confirms that the requirement to conduct IEP meetings to consider compensatory education and services applies in the case of students who had an IEP between March 18, 2020 and September 1, 2021 but have since graduated. It further directs LEAs to maintain documentation of attempts to conduct IEP meetings with these students. What has NJDOE done to ensure that families of students who have graduated are aware of the requirements of N.J.A.C. 18A:46-1.3, and what data has NJDOE gathered regarding the conducting of IEP meetings with these students?
4. What training has NJDOE provided to Administrative Law Judges regarding newly enacted N.J.S.A. 18A:46-1.3?

We have been disheartened to learn of delays on the part of school districts in convening IEP meetings to consider compensatory education services, even when parents request that an IEP meeting be held. Even worse, some districts have been resistant to consider the topic at all. With only three months remaining before the deadline for IEP team meetings specified in N.J.S.A. 18A:46-1.3(b), it is critical that NJDOE maximize LEA compliance with N.J.S.A. 18A:46-1.3. The New Jersey Legislature and Governor Murphy both determined that enacting this statute was critically important for students with disabilities for whom the impact of the pandemic is ongoing.

Please let us know what steps will be taken by NJDOE to ensure that IEP meetings are held and decisions as to the times and places for compensatory education determined, individually for each student, by the IEP team, including the parent by no later than December 31, 2022.

I look forward to hearing from you regarding the above issues. If you are available for a phone conference, please let me know. I can be reached at athos@edlawcenter.org or (973) 624-1815, ext. 200. Thank you for your courtesies and prompt response.

Respectfully,



Elizabeth Athos, Esq.
NJSEP Moderator and ELC Senior Attorney

Cc: Kimberly Murray, Director, Office of Special Education