



Governor Signs Law on Compensatory Education Beyond Age 21

On June 16, 2021, Governor Murphy signed into law P.L.2021, c.109, which requires school districts to determine whether special education students who would ordinarily “age out” after reaching age 21 should receive “additional or compensatory special education and related services” for up to an entire additional school year. P.L.2021, c.109 is intended to address the learning loss that many students with disabilities have experienced since the pandemic began in March 2020, and schools were ordered to transition to remote learning. The new law takes effect immediately and imposes a number of obligations upon school districts, which are addressed in further detail below:

- Determine whether students who would ordinarily “age out” of special education should receive additional or compensatory education and services, and hold IEP meetings to make that determination unless agreed otherwise.
- Resolve and/or defend against requests for mediation and due process and complaint investigations arising from disputes over additional or compensatory education and services for eligible students, including, but not limited to, potential “stay put” claims seeking emergent relief.
- Consider funding sources for the education and services described in the law.
- Consider whether students placed in State-approved private schools may receive additional or compensatory education at those schools, and ensure that tuition rates are compliant with the law.

1. Districts Must Determine “Additional or Compensatory Education” for Students Turning 21 During the 2020-2021, 2021-2022, and 2022-2023 School Years

P.L.2021, c.109 requires districts to provide special education and related services contained in an IEP to a student with disabilities who attains age 21 during the 2020-2021, 2021-2022, or 2022-2023 school year, provided that the parent and the IEP team determine that the student requires “additional or compensatory special education and related services, including transition services,” during the following year. The law does not automatically guarantee each student covered by the law an additional year of education at the district’s expense. Rather, the IEP team must determine whether, and to what extent, each student turns who turns 21 during the 2020-2021, 2021-2022, or 2022-2023 school year should receive “additional or compensatory special education and related services,” which may or may not consist of a full additional year of education and services.

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Although the law states that such a student “shall not be eligible to receive such education and services beyond June 30” of the year in which he or she attains age 22, it also contains an exception if such education and services are provided for in an IEP, or are “ordered by a hearing officer, complaint investigation, or court of competent jurisdiction.” The education and services which must be funded by districts “may include, but are not limited to, the additional staff, programs, and facilities deemed necessary by school districts to provide the special education and related services, including transition services.”

2. Districts Should Hold IEP Meetings to Determine “Additional or Compensatory Education.” Unless Agreed Otherwise

Because the IEP team must determine the extent to which additional or compensatory education and services should be provided to each student covered by the law, and allow for parental input and participation, districts should convene IEP meetings to make that determination, and document it by providing written notice following the meeting. The written notice should carefully and thoroughly state the reasons for the IEP team’s decision, and describe with specificity any and all compensatory services the student has already received to address any learning loss caused by the pandemic.

Of course, in the event that a district is able to reach an agreement with a parent and/or adult student regarding additional or compensatory education and services, it would be permissible to agree upon an IEP for the following year without holding a meeting. For example, if the district and the parent were to agree that the student should simply remain in his or her current placement for an additional school year, an IEP could be issued reflecting that placement for the following year, with no need to convene a formal IEP meeting.

3. Rights Applicable to Students Eligible for Additional or Compensatory Education and Services

P.L.2021, c.109 provides that students covered by the law will be entitled to the same rights, privileges, and remedies provided to all students with disabilities under State and federal law and regulations. This includes, but not limited to, the right to file a request for mediation, due process, and/or a complaint investigation with the New Jersey Department of Education (“NJDOE”), Office of Special Education Policy and Dispute Resolution, based on a dispute over additional or compensatory special education and related services.

4. “Stay Put” Rights for Students Eligible for Additional or Compensatory Education and Services

P.L.2021, c.109 does not contain any language that would explicitly impact the application of “stay put” principles to disputes regarding additional or compensatory special education and related services. As a result, students who would otherwise “age out” should not be able to obtain an automatic “stay put” order requiring the district to maintain the current program and placement throughout the pendency of a due process hearing, even if

they seek emergent relief and/or file a request for mediation and/or due process based on a disagreement as to additional or compensatory special education and related services.

In other words, current State and federal law provides that students who “age out” at the end of the school year in which they turn 21 are not entitled to an automatic “stay put” order that obligates the district to maintain their special education program and placement until a due process hearing is completed, and P.L.2021, c.109 does not contain any provisions stating otherwise. Nevertheless, it is not yet clear how an Administrative Law Judge would rule regarding the extent to which “stay put” should automatically apply to cases involving disagreement with the IEP team’s determination regarding additional or compensatory special education and related services.

5. Funding Sources for Additional or Compensatory Education

P.L.2021, c.109 directs that the education and services provided to any students with disabilities pursuant to the law must, to the extent permitted by federal law, be funded using the monies received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the American Rescue Plan (ARP) Act, “or any other federal funding provided to address the impact of the coronavirus pandemic on elementary and secondary schools as it becomes available.” To the extent that such federal funding does not cover the costs incurred by a district due to providing the additional or compensatory education and related services required by P.L.2021, c.109, the law reflects that the State must “appropriate funds as necessary from the Property Tax Relief Fund to reimburse school districts for these costs.”

6. State-Approved Private Schools for Students with Disabilities

Finally, the NJDOE must permit State-approved private schools for students with disabilities to “temporarily utilize non-qualifying spaces on school property for instruction and educational purposes in order to serve any additional students receiving special education and related services, including transition services” under P.L.2021, c.109, if the NJDOE and the county office of education determine that the school can provide suitable accommodations in such spaces. This temporary permission includes the 2021-2022 school year through the 2023-2024 school year. Furthermore, for the 2021-2022 school year through the 2025-2026 school year, the NJDOE will be required to “set the maximum tentative tuition rate of each approved private school for students with disabilities at the maximum tentative tuition rate set for the 2020-2021 school year if, during the 2021-2022 school year through the 2023-2024 school year, the school exceeds the total number of students at the approved facility in the 2020-2021 school year.”

Conclusion

School districts must determine the extent to which each student who turns 21 during the 2020-2021, 2021-2022, and 2022-2023 school years should receive “additional or compensatory special education and related services, including transition services,” and convene an IEP meeting for purposes of allowing the parents the opportunity to actively

participate in that decision. The district should thoroughly document the IEP team's decision and reasoning by way of a written notice issued shortly after the conclusion of the meeting. The district and the parent may also agree to waive a formal IEP meeting and agree upon an IEP for the following year without conducting a meeting.

If a parent, guardian, or adult student disputes the district's determination regarding any issues related to the extent to which the student should receive additional or compensatory special education and related services for up to an additional school year, the same rights and procedures relating to requests for mediation, due process, and complaint investigation will apply to such a dispute. The written notice described above will likely form the basis of the district's defense in any due process matter or complaint investigation initiated by the parent and/or adult student.

Moreover, "stay put" ordinarily does not permit an order requiring a district to maintain the special education program and placement of a student who has "aged out" due to reaching age 21 pending the outcome of a due process hearing, and the new law does not change that principle. However, it is not yet clear how Administrative Law Judges will view requests for automatic "stay put" protections to be applied to students age 21 and over who are covered by the law, when parents disagree with the IEP team's determination on compensatory education and services and seek to maintain a student's program and placement throughout the pendency of a due process hearing.

The Busch Law Group will continue to provide legal updates on these and other significant issues related to COVID-19, as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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