

TRANSITION SERVICES AND GRADUATION – SPECIAL EDUCATION DURING COVID-19 PANDEMIC FREQUENTLY ASKED QUESTIONS

The COVID-19 pandemic has created a hardship on many parents and students with disabilities. This was created to answer the primary questions about special education that have arisen during the pandemic. The information provided below is for educational and information purposes only and thus should not be considered legal advice.

TRANSITION SERVICES

WHAT TYPE OF TRANSITION SERVICES IS MY CHILD ENTITLED TO DURING THE PANDEMIC?

Transition planning and services are required under the Individuals with Disabilities Education Act (IDEA) to help students with disabilities prepare for success after high school. The appropriate delivery of transition services may require some creativity on the part of the parent and school district. Some transition services may be provided remotely, just like academic or related services. If the student requires daily life skills training like washing clothes, cooking, cleaning, or completing a resume, the instructor could coach the parent on how to help the student build certain skills. Very specific instructions and tasks should be given. Further, student on-the-job experiences could be replaced with virtual field trips, online work experience and/or volunteer opportunities that could be performed from the student's home.

Occupational training programs at vocational schools may be modified during the pandemic. However, some programs may have mandatory hands-on training requirements to qualify for a certification or license to land a full-time job. Those programs would need to be extended to allow the student time to complete the hands-on requirements.

SHOULD TRANSITION PLANNING BE DELAYED DUE TO THE PANDEMIC?

No. Transition planning in New Jersey begins when a child turns 14 years old or younger if the IEP team decides it is appropriate. Transition planning continues until a student graduates.

GRADUATION

WHAT HAPPENS TO MY RIGHT TO SEEK COMPENSATORY EDUCATION IF THE SCHOOL DISTRICT WANTS TO GRADUATE MY CHILD?

The parent could potentially lose the right to seek compensatory education, whether it be academic instruction, related services or transitional services, if the parent allows the school district to graduate the student.

Graduation with a diploma is considered a "change of placement." The family must receive written notice. If the district wants to graduate a student, the IDEA requires the district to

provide the parent with an official graduation notice. The graduation notice includes an explanation that the parent has up to 15 days from receipt of the notice to file for mediation or due process to stop the graduation from taking place until the issue is resolved. The stoppage of graduation until the issue is resolved is called stay-put. You might need to file for emergent relief to get a stay-put order from the New Jersey Office of Administrative Law.

HOW DO I ASK FOR EMERGENT RELIEF?

If the parent believes emergent relief is needed, the parent should fill out an emergent relief request along with a due process request on pages 31 through 37 of the Parental Rights in Special Education packet which can be found at:

[https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights\(PRISE\).pdf](https://www.nj.gov/education/specialed/form/prise/RevisedParentalRights(PRISE).pdf)

You will see that the certification form for emergent relief on page 36 gives the impression that you need to show the following points to obtain the relief:

- The student will suffer harm if the relief requested is not granted;
- The parent presents an argument that connects to the rights of the student and has a likelihood of winning; and
- The student will suffer a greater harm than the school district if the relief you requested is not granted.

Please understand that if you filed for mediation or due process within 15 days of receiving the official graduation notice, you could complete the certification form on page 36 but would actually not need to prove these points above to obtain stay-put.

Instead of proving these points, you would only need to show:

- a) when you received the graduation notice, and
- b) that you filed for mediation or due process within 15 days of receiving the notice.

Stay-put is an automatic stoppage of the graduation until the matter is resolved. Therefore, it would be a good idea for any parent seeking to prevent the graduation from taking place to mention this case, *Drinker by Drinker v. Colonial Sch. Dist.*, 78 F.3d 859 (3d Cir. 1996), in the emergent relief form because that case explains that stay-put functions as an automatic stoppage.

WHAT ARE THE GRADUATION TESTING REQUIREMENTS DURING THE PANDEMIC?

The cancellation of New Jersey statewide assessments will not keep students from meeting their graduation assessment requirements. The Governor's Executive Order No. 117 specifically waives the graduation assessment requirement for all seniors who are expected to graduate this school year. The alternative state test – DLM (Dynamic Learning Maps) - has been cancelled for the spring.

Additionally, the New Jersey Department of Education (NJDOE) plans to make the New Jersey Student Learning Assessments (NJSLA) available in the summer or fall for current high school freshman, sophomores, and juniors (and middle school students taking high school classes) who may want to use the NJSLA high school assessments to meet their graduation assessment requirements. **Parents should look at the current IEP to see what assessments their child was going to take and talk with the other IEP team members to decide future plans.**

HOW WILL I KNOW IF MY CHILD HAS QUALIFIED FOR GRADUATION?

Your child's school does not have to evaluate your child prior to ending services or approving your child for graduation. However, they must provide you with a summary of your child's academic achievement and functional performance. This must include recommendations on how to assist your child in meeting his or her post-secondary goals.

WHAT IF THE IEP TEAM SAYS MY CHILD HAS MET ALL ACADEMIC REQUIREMENTS?

This is a great accomplishment for a student but not the only factor in deciding if graduation is appropriate. Students with disabilities are entitled to a free, appropriate public education (FAPE). The decision to graduate a student with disabilities rests on if FAPE was provided. FAPE includes transition services. Such a student can complete the academic requirements but not receive a diploma if the student has not received appropriate transition services.

WHAT SERVICES IS MY CHILD ENTITLED TO RECEIVE AFTER GRADUATION?

Graduation might be delayed for some children to receive compensatory education. According to the NJDOE, school districts should consider providing additional services to students with disabilities beyond June 30, 2020. This decision should be made as a team during the annual IEP meeting. If the annual meeting has already occurred and postponing graduation was not discussed, parents should contact the school to request another meeting. All parents, guardians, and students in or near their graduation year should become familiar with the DDD timeline for graduates, which can be found at <https://www.nj.gov/humanservices/ddd/documents/graduates-timeline.pdf>.

If the IEP team determines and documents that a student has not met the graduation requirements or that the student's graduation requirements include 18–21 services, the student can continue to receive services until the school year in which they turn 21. The determination that the student has not met graduation requirements should be based on the student's course of study in the IEP and his or her performance and progress before the school closed due to the pandemic.

MY CHILD TURNED 21 THIS YEAR AND IS AGING OUT OF SCHOOL. CAN MY CHILD STAY IN SCHOOL FOR ANOTHER YEAR?

The NJDOE does not have the flexibility to extend eligibility for IDEA special education services beyond June 30, 2020, for students who have reached the age of 21 during the 2019-2020 school year. Schools have been encouraged by the NJDOE to consider the need for

services due to services missed during the period of school building closure. **Parents still have a right to seek compensatory education services through a special education due process hearing.**

WHAT ADDITIONAL SERVICES COULD BE PROVIDED TO MY CHILD IF MY CHILD IS GRADUATING OR AGING OUT?

If your child is graduating or aging out, be sure to ask if any of the following services are going to be provided by your child's school district:

- Assistance accessing Agency/Community Resources
- Instruction in activities for daily living
- Instruction in personal finance
- Community-based instruction
- Community participation
- Evaluations for Post-Secondary Use
- Health and Safety training
- Job Sampling
- Job Coaching or Training Opportunities
- Pro-College Support Services
- Employment Support Services
- Related Services (OT/PT/Speech-Language/ Counseling)
- Self-Advocacy Skills
- Social Skills
- Structured Learning Experiences
- Supplemental Instruction or Tutoring

The list is long but not everything that could be offered to a student in special education. If your child's district does not plan to offer any of the additional services above to your child who is graduating or aging out during the 2019-20 school year, ask for the reason in writing.

WHOM SHOULD I CALL FOR ASSISTANCE REGARDING MY CHILD'S SPECIAL EDUCATION SERVICES?

You can contact Disability Rights New Jersey's Intake Office anytime by way of telephone at 800-922-7233. If you are calling from either your cell phone or outside of New Jersey, you can only reach DRNJ at 609-292-9742. You may also send an e-mail to advocate@drnj.org.