



What Special Education Parents Need to Know Now that S3434 Has Been Signed

- *Did your child with disabilities turn 21 by June 30, 2021?*
- *Did they miss out on vital transition services due to the pandemic?*
- *Did your child graduate because they turned 21 during the 2020-2021 school year?*

Not so fast...**There is a new law in effect.**

S3434 was signed by Governor Murphy on June 16, 2021. It allows students who turned 21 during the 2021-2022 to continue to receive **special education, related services, and transition services** through at least the 2021-2022 school year. These services must be provided to those students during the 2021-2022 school year when the Individualized Education Program Team (IEP) team, including the parent and adult student, determine that the student requires additional or compensatory special education and related services, including transition services. The student will not be eligible to receive services beyond June 30, 2022, unless provided for in the student's IEP, or as ordered by a hearing offer, complaint investigation, or court of competent jurisdiction.

Because the bill was signed so late, your child has likely graduated. **You can still seek services under the law.**

Q: How is the decision about additional or compensatory services made?

A: Students are eligible for additional or compensatory services under S3434 as long as the parent of the student and the IEP team - which also includes the parent or adult student - agree that the student needs additional or compensatory special education and related services, including transition services.

Q. Is the continuation of services automatic for all students who turned 21 by June 30, 2021?

A. No. However, S3434 extends the age of eligibility for special education and related services for students turning 21 by June 30, 2021, so those students can continue to receive special education and related services through at least June 30, 2022. The law makes clear, though, that the student's IEP team and the parent of the student will determine whether the student requires additional or compensatory special education and related services.

Q: My child turned 21 during the 2020-2021 school year. My child and I think they need additional or compensatory services. What can we do?

A: Immediately write a letter from you and your child to your case manager as follows:

1. Ask for an IEP meeting. Tell them your child needs additional or compensatory services. Tell them about this new law and share this fact sheet.

2. Tell them your child will not accept a diploma at this time and graduation is not appropriate without further services.
3. If you have already received your child's diploma, send it back to the school district. We recommend sending it to your school district's Superintendent by certified mail, return receipt requested, with a cover letter stating that your child does not accept a diploma at this time and is seeking additional or compensatory services under S3434. Copy your child's case manager on the letter.
4. Ask your case manager to confirm in writing that your student's current IEP (specify the date) will remain in effect until the IEP meeting is scheduled and a new IEP can be developed. Let the case manager know that you and your child will need to file for mediation or due process unless you receive that written confirmation.
5. If you get no response and you want to maintain the status quo while an IEP meeting is held and a new IEP developed for the additional and compensatory services, you can file for mediation or due process to invoke stay-put for the current IEP. The Request for Mediation/Due Process form and instructions on filing electronically are available on this NJ Department of Education webpage: <https://www.nj.gov/education/specialed/due/>. In a June 21, 2021 decision, an Administrative Law Judge ruled that stay-put applies to students covered by S3434 and that stay-put includes extended school year (ESY) services for students who have consistently had ESY in their IEPs, even if ESY was not included in the exit IEP. For a link to this decision, please see B.D. v. Edison Twp. Board of Educ. under the last question about resources below. For information on filing for due process, please refer to the June 15 Parent Webinar recording in the last question about resources below.

Note: If your district refuses to comply with stay-put by providing services required by your child's last agreed-upon IEP, you can use the emergent relief process to enforce stay-put. If you filed for mediation, you will need to convert your request to due process, since emergent relief requires a pending due process petition. For information on filing for emergent relief, please refer to the June 22 Parent Webinar recording in the last question about resources below.

Q. How can we demonstrate my child should receive additional or compensatory services?

A. The pandemic affected every aspect of education, related services and instruction. Congress chose, however, not to waive any requirements of the Individuals with Disabilities Education Act (IDEA), including the right to a free appropriate public education (FAPE). There are many reasons why your child may now be entitled to additional or compensatory services.

During the pandemic, school districts were allowed to implement students' IEPs virtually or through other online platforms "as appropriate." They were told, though, that providing services virtually would not necessarily meet their legal obligation to provide FAPE.

In some instances, it was not possible to provide the IEP services virtually. For example, access to community-based learning, job training, mobility training and other transition services was extremely limited.

In other instances, the student did not have access to a computer or iPad or lacked adequate access to the internet. Some students did not receive all of the services required by their IEPs. Others did not receive the amount of services they were supposed to. Some students also experienced mental health issues, increases in behavioral issues, and loss of skills (regression).

In preparation for the IEP meeting, think about what IEP services YOUR child did not receive and how you observed YOUR child responding to the virtual instruction that was offered. Collect any assessments, progress reports, evaluations, and video recordings of your child's skill acquisition or regression. Ask for your district's service logs. Document all IEP services that were missed entirely or partially. Also document when virtual services were provided that were not appropriate for your child. Total the number of missed hours and the number of inappropriate hours for each service.

Q: What services can be provided and what should I ask for?

A: S3434 allows students to receive "additional or compensatory special education and related services, including transition services." It does not impose any other limits on what services can be provided. In some cases, the student may request all of the services, supports, and accommodations in the student's 2020-2021 IEP, including transition services such as community-based instruction, job sampling, and transportation. Other students may want to change some of the services, spend more time in community-based instruction or job sampling or add different accommodations/modifications to the IEP. In other instances, a student may request only a particular type of service, such as compensatory services to make up for physical therapy that was not provided or wasn't appropriate virtually. Services can also be added to address any regression that has occurred as well as new issues that developed during the pandemic. Relevant considerations include:

1. Time during which my student did not receive all of the special education, related services, accommodations and modifications that should have been provided but were not from March 18, 2020 through [date] [specify services and time period];
2. Additional compensatory services needed due to regression experienced;
3. Compensatory education for virtual instruction that was not appropriate for my student [specify services and time period]; and
4. Compensatory education for the time period between March 18, 2020 and [date] when student was without computer/iPad and/or adequate internet access.

Q. How can the compensatory or additional services be provided?

A. S3434 does not place any limits on how the compensatory or additional services can be provided. Parents should go to the IEP team meeting prepared to say how they would like the additional or compensatory services provided. Some possible options to consider requesting are the following:

1. Continuation of services in the school district or private school attended during 2020-2021 school year;

2. Provision of additional or compensatory services in a different public or private school;
3. A block of agreed-upon hours for specific services, with the parent scheduling the services from a list of providers at mutually agreed-to times.
4. A combination of the above.

Q. Is my child entitled to receive more than one year of services under S3434?

A: S3434 says that students turning 21 during the 2020-2021 school may receive additional and compensatory services during the 2021-2022 school year until June 30, 2022. It contains similar language for those turning 21 during the 2021-2022 school (services to be provided during the 2022-2023 school year) and those turning 21 during the 2022-2023 school year (services to be provided during the 2023-2024 school year).

S3434 says, however, that services will stop on that date “unless otherwise provided in a student’s individualized education program or as ordered by a hearing officer, complaint investigation, or court of competent jurisdiction.” One possible reason why an IEP team, including the parent and student, may decide to extend services could be that your child misses their extended school year (ESY) program for the summer because the program is full and it is decided that your child will receive an ESY program during the summer of 2022 instead. Another possible reason could be your IEP team, including you and the student, agrees that more than one year of compensatory or additional services are needed because of the extent of services that were missed or the regression that your child experienced.

Q: My child and I believe my child needs additional or compensatory services, but the other members of the IEP team disagree. What can we do?

A: Students whose eligibility for special education and related services has been extended as a result of S3434 have all of the rights, privileges, protections and remedies in IDEA and under state law and regulations. This means that any disputes as to whether your child will receive additional or compensatory services or disputes about what the IEP will include can be addressed through mediation or due process.

If you disagree with the IEP proposed for the additional or compensatory services and file mediation or due process, this will invoke what is commonly referred to as the stay-put. The purpose of the stay-put is to maintain the status quo until mediation or due process is resolved and any appeals have concluded. The stay-put is a student’s current educational placement or the special education and related services set out in the last-agreed upon IEP. Here, this will likely be the IEP that was in operation in June 2021, but may include ESY if that was consistently provided in prior IEPs and was only removed from the current IEP because your child was expected to graduate or age out. For more information on how to file due process or emergent relief for stay-put, please refer to the recordings of Parent Webinars in the last question about resources below. For legal support for including ESY in stay-put, please see the [B.D. v. Edison Twp. Board of Educ.](#) decision linked to in the last question about resources below.

Q. My school district is refusing to conduct an IEP meeting following the signing of S3434. What can we do?

A: You could first try calling your County Office of Education (<https://www.nj.gov/education/about/counties/>) and explain that you have requested additional or compensatory services under S3434 and your school district has refused to schedule an IEP meeting to discuss your request. Hopefully, they will reach out and encourage the district to schedule the meeting.

If not successful, you can file for mediation or due process in which you explain that your district has refused to hold an IEP meeting. As relief, ask for an immediate IEP meeting to discuss additional or compensatory services for your child under S3434. As discussed above, filing mediation or due process invokes the stay-put. While the district decides whether it will comply with S3434 and convene an IEP meeting to discuss additional or compensatory services, it will need to continue to provide special education and related services set out in the most recent agreed-upon IEP. This may include providing ESY if consistently provided in prior IEPs, even if ESY was removed from the exit IEP because your child was expected to graduate or age out. See the B.D. v. Edison Twp. Board of Educ. decision linked to in the last question about resources below.

Q. My school district is asking me to agree to waive any future claims against the district in order to receive the additional or compensatory services allowed under S3434. Do I need to sign this document in order for my child to receive the additional or compensatory services?

A. No. S3434 does not require parents or students to waive ANY claims against the school district in order to receive the additional or compensatory services allowed by S3434. In early 2020, some school districts told parents that in order for their child to receive virtual or remote services, the parent must agree to waive any future claims against the school district. On April 30, 2020, New Jersey Department of Education (NJDOE) issued guidance in which it emphatically told school districts it was a violation of IDEA and state regulations to condition receipt of virtual or remote services on the parent waiving right to file future claims against the school district. In addition, NJDOE reminded districts that a key right of parents is to disagree with a school district's actions concerning the educational program of a student. This clearly remains the case under S3434 as it expressly states that parents have all the rights, privileges and remedies under S3434 that they have under the IDEA and state statutes and regulations.

Q: My child will turn 21 during the 2021-2022 school year. Will this law help them too?

A: Yes. S3434 extends eligibility for students who will turn 21 during the 2021-2022 and the 2022-2023 school years and they may also request additional or compensatory services for the school year after they turn 21.

Q. My child turned 21 during the 2019-20 school year. Are they covered by S3434?

A: No. S3434 does not apply to students who turned 21 prior to the 2020-21 school year. However, all students who are eligible for special education under the Individuals with Disabilities Education Act (IDEA) have a right to compensatory education when IEP-required services have not been provided or when inappropriate services have been provided, as long as

the claim for compensatory education is timely. With some limited exceptions, a due process hearing to obtain compensatory education must be filed within two years of when you knew or should have known of the denial of appropriate services. If you knew or should have known that the virtual services your child received on March 18, 2020 were not appropriate, then you must file any claim for compensatory education by March 18, 2022.

Q. Is there a time limit or statute of limitations for filing due process concerning services under S3434?

A: The same 2-year statute of limitations for IDEA claims should apply to claims brought under S3434 – that is, with some limited exceptions, the due process must be filed within two years of when the parent knew or should have known of the violation. For example, if a parent requested additional or compensatory services under S3434 and the IEP team notified them on July 6, 2021 that it did not believe the student needed compensatory services, the parent would need to file for mediation or due process no later than July 6, 2023 to challenge that determination.

Q: My child attends a private school, and they are already full for next year. What can I do?

A: For each year through the 2023-2024 school year, approved private schools for students with disabilities can use ‘non-qualifying’ spaces on school property for instruction and educational purposes in order to serve additional students as long as suitable accommodations can be provided.

Q: How are additional or compensatory services under S3434 funded?

A: Parents cannot be asked to pay for these services. Services will be paid for with NEW funding from three federal programs set up to address the impact of the pandemic. If these funds do not cover the costs, the State will reimburse school districts for these costs.

Q: When does the law take effect?

A: The moment the law was signed by Governor Murphy on June 16, 2021, it took effect immediately.

Q: What if my child and I need legal assistance to obtain services under this new law?

A: Lower income families residing in northern and central New Jersey can contact Education Law Center (973-624-1815, ext. 30). All other families can contact Disability Rights New Jersey (609-292-9742 or 800-922-7233).

Q: What resources are available to assist my child and me?

A: The following resources are available:
Recording of June 15 Parent Webinar: Filing Due Process and Invoking Stay-Put When You Disagree With Your Child’s Graduation (<https://vimeo.com/563318478/fbdfb34936>)
(includes detailed information on filing a due process petition).

Recording of June 16 Parent Webinar: Filing Due Process and Invoking Stay-Put When You Disagree With Your Child’s Graduation (<https://vimeo.com/564116627/6a5603e608>)

(modified from prior webinar to address signing of S-3434).

Recording of June 22 Parent Webinar: Preparing and Filing Emergent Relief for Stay-Put
(<https://vimeo.com/566169571/c984597eff>).

B.D. v. Edison Twp. Board of Educ., OAL Dkt. No. EDS 05026-21 (June 21, 2021)
(<https://www.nj.gov/education/legal/specialed/2021/2021-32955ER.pdf>)

ELC, The Right to Special Education in New Jersey: A Guide for Advocates (2008)
(https://edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf).

ELC, COVID-19 and Students with Disabilities: Frequently Asked Questions (Dec. 2020)
(https://edlawcenter.org/assets/files/pdfs/publications/COVID_19_and_SWF_FAQ_3rd_Ed_De_c.pdf).

The Arc of New Jersey Family Institute, IEP Go Bag
(<https://www.thearcfamilyinstitute.org/resources/iepgobag.html>).

