

# Compensatory Education

How to advocate for your child and address COVID-19-related issues

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*for* **ADVOCATES**<sup>®</sup>  
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# About Advocates for Children of New Jersey (ACNJ)

**ACNJ's** work as an independent non-profit organization for over 40 years has resulted in better laws and policies, more effective funding and stronger services for children and families, giving more children a chance to grow up safe, healthy and educated. We work closely with state and federal lawmakers and policymakers to bolster their understanding and response to the needs of children and families.

**Kidlaw Resource Center** provides information and assistance to parents and those working with families about laws and legal processes affecting children, including education and child welfare issues.

You can learn more at [www.acnj.org](http://www.acnj.org)



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## What You Will Learn

Basic special education rights

Explanation of compensatory education

Education rights related to COVID-19

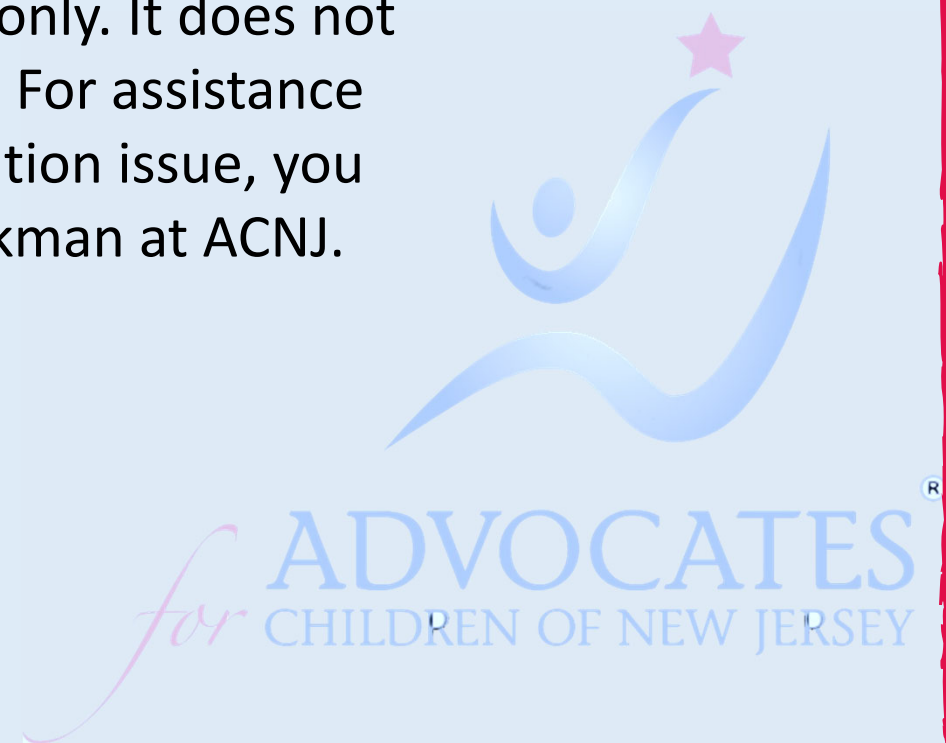
Advocacy tips regarding how to access compensatory education services

Helpful resources



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This presentation is intended for informational purposes only. It does not constitute legal advice. For assistance with a particular education issue, you may contact Nina Peckman at ACNJ.



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New Jersey State Bar Foundation and made possible  
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Jersey.

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law-related activities, please call 1-800-FREE-LAW or visit  
the Foundation at [njsbf.org](http://njsbf.org).



# How the COVID-19 Pandemic Affected New Jersey Students

- The pandemic severely impacted many students and their families.
- Related school closures between March 18, 2020 and September 1, 2021 caused many students to fail to progress as expected or to regress due to learning, social and emotional difficulties.
- Schools faced significant staffing and resource issues.
- Challenges during remote learning included:
  - Internet and technology issues,
  - Inadequate instruction through paper packets,
  - No instruction at all for periods of time,
  - Students with disabilities missing therapies, behavior and academic supports and instruction, and
  - English language learners not receiving necessary bilingual instruction and services.



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# How Do I Know if My Child is Experiencing Learning Loss?

Parents have the **right to school records** that document academic progress, including:

- Report cards and progress reports;
- Child study team (CST) records;
- Discipline, behavior write-ups and attendance;
- Informal and formal assessment results; and
- School logs of dates and times related service providers met with your child.





## If My Child Experienced Learning Loss?

Many New Jersey children experienced learning loss due to COVID-19-related issues. The U.S. and New Jersey Department of Education stated schools must help **ALL students make up for learning loss** and **students with disabilities retained all their education rights**.

New Jersey schools received federal funding to assist students get back on track through:

- Remediation programs that meet your child where they're at; and
- Accelerated instruction that keep your child on track while helping to fill in the gaps.

Write to school staff to ask for a meeting to talk about what programs and services are available to help remediate learning loss and how to access them.

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## Basic Special Education Rights

- Children from age 3 through age 21 years are eligible.
- Eligibility is based upon a disability that affects learning in school (a serious problem).
- Schools must **identify** children who could be eligible through multi-disciplinary evaluations in all areas of suspected disabilities at no expense to the parent.
- If evaluations prove eligibility, the IEP team will develop the written education plan known as an **Individualized Education Plan (IEP)**.

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## Special Education Timelines

**Within 20 days** of written request to child study team:

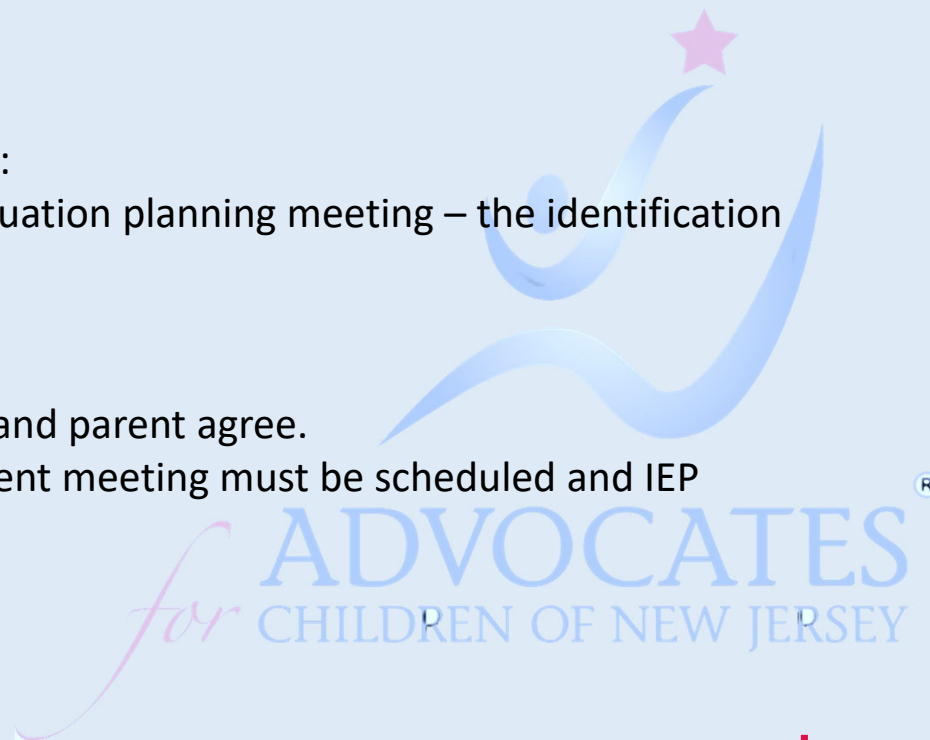
- Child study team meets with parent for an evaluation planning meeting – the identification meeting.

**Within 90 days** of the identification meeting:

- Evaluations are conducted, if child study team and parent agree.
- Eligibility meeting and if eligible, IEP development meeting must be scheduled and IEP implemented if parent agrees.

**At the anniversary of initial IEP**, an annual review.

**At least every 3 years**, re-evaluations.



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## A Student's Right to Learn and Progress

- The IEP must be 'reasonably calculated' to enable the child to make meaningful progress appropriate in light of the child's circumstances.
- This means, when reading the proposed IEP, it should be clear that the services and placement being offered is going to help the child to learn and progress given all the child's academic strengths and weaknesses and their behavioral and emotional needs.

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## Students With Disabilities May Be Eligible for Compensatory Education Due to COVID-19-Related Issues

- Compensatory education are additional education services to make up for the services that should have been provided under an existing or an initial IEP.
- Student with a disability may be eligible even if the district did its best to meet the needs of the student.
- IEP teams should schedule a meeting no later than December 31, 2022 to discuss the services that students received between March 18, 2020 when schools closed and September 1, 2021 to determine eligibility for compensatory education.

**Parents may make a written request to the CST for an IEP meeting to discuss compensatory education.**

## SAMPLE LETTER REQUESTING IEP MEETING

Date \_\_\_\_\_

CST Case Manager \_\_\_\_\_

School Name and Address \_\_\_\_\_

Dear \_\_\_\_\_:

I am requesting an IEP meeting concerning my child, (name of student), who is in the \_\_\_\_ grade, to discuss compensatory education issues relating to the services my child received from March 18, 2020 to September 1, 2021. I am writing because my child did not receive all the services that should have been provided and missed education and/or due to my child's failure to make appropriate progress as result of COVID-19. I understand that the school district will schedule an IEP meeting within 20 calendar days of your receipt of this letter. Please contact me to propose the time and date of the meeting. Thank you in advance for your consideration.

Sincerely,

\_\_\_\_\_  
*Parent - Print name and sign, and include mailing address, email address and phone number.*

*State if you will need a translator, who you will be bringing to the meeting and if you will record the meeting.*

*Send a copy of this letter to your district's Director of Special Education.*

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## Is My Child Eligible For Compensatory Education?

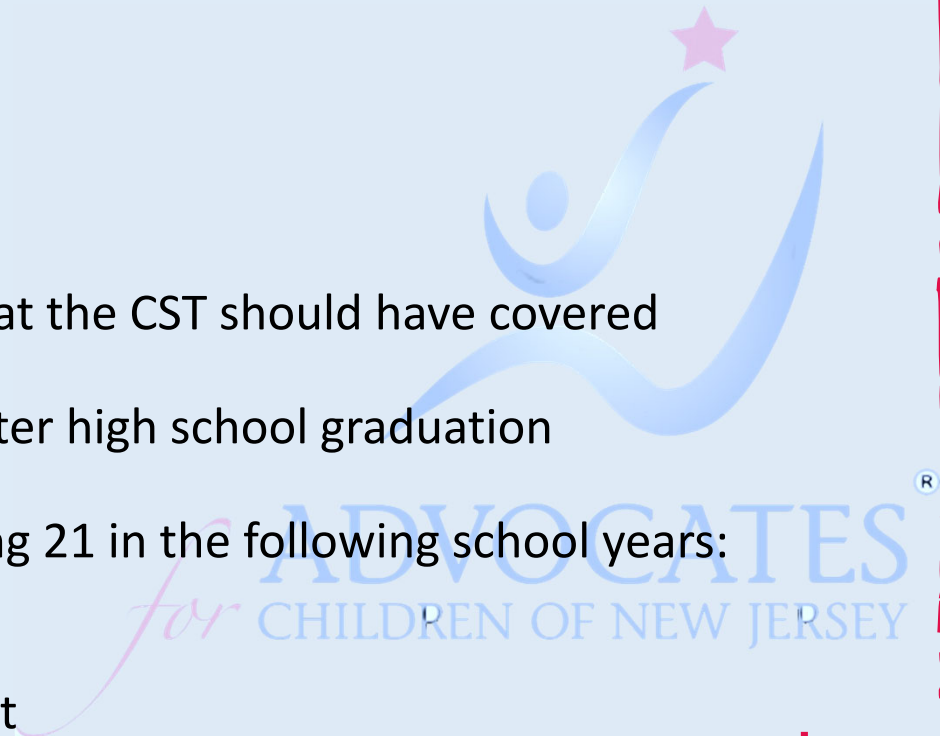
- **Compensatory education may be appropriate for reasons such as the student:**
  - did not have access to a working computer and/or did not have access to classes or schoolwork due to internet issues;
  - could not learn through remote instruction due to the student's disability;
  - needed a one-on-one aide but one was not provided;
  - did not receive the school-based therapies they were entitled to;
  - did not receive other IEP services or accommodations appropriately;
  - only received paper packets and/or did not have regular access to the teacher;
  - required bilingual education services but they were not provided; and
  - received CST evaluations and/or appropriate IEP services only after a long delay.

**\*Parents do not have to prove that the student regressed.**

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## Example Of Compensatory Education Services Due To COVID-19-Related Issues

- Additional related services
- Tutoring
- Extended school year
- Reimbursement for costs of services that the CST should have covered
- Transition and/or education services after high school graduation
- Another school year for students turning 21 in the following school years:  
2021-2022 or 2022-2023
- A more intensive program out of district

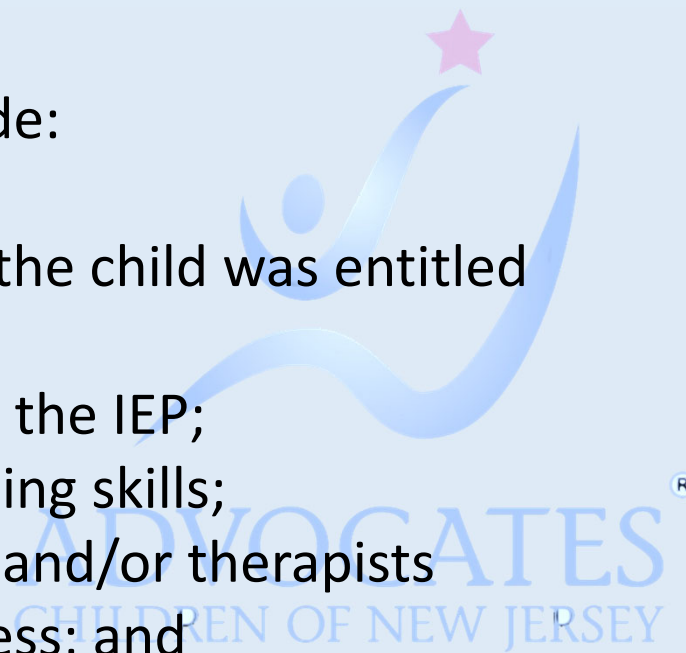




## What Should I Bring To My Child's Compensatory Education IEP Meeting?

Relevant records include:

- Any records or logs of missed services that the child was entitled to receive under the IEP;
- Receipts for therapies or services related to the IEP;
- Videos/recordings of your child demonstrating skills;
- Evaluation reports from treating physicians and/or therapists documenting child's current levels of progress; and
- School records, including CST records.







## Should I Try To Resolve Issues Informally?

- Under New Jersey law, schools should make up services using a 1:1 ratio (ex., if student missed ten speech sessions, the student is entitled to ten make-up sessions, unless the parent and district agree to another form of compensatory education).
- Consider risks, costs, length of litigation **versus** negotiating terms now for some but not everything you seek
- When negotiating, ask yourself: **what services will my child most benefit from now and/or later?**
- Since COVID-19-related compensatory education is new legal area, it's unclear how courts will decide cases.

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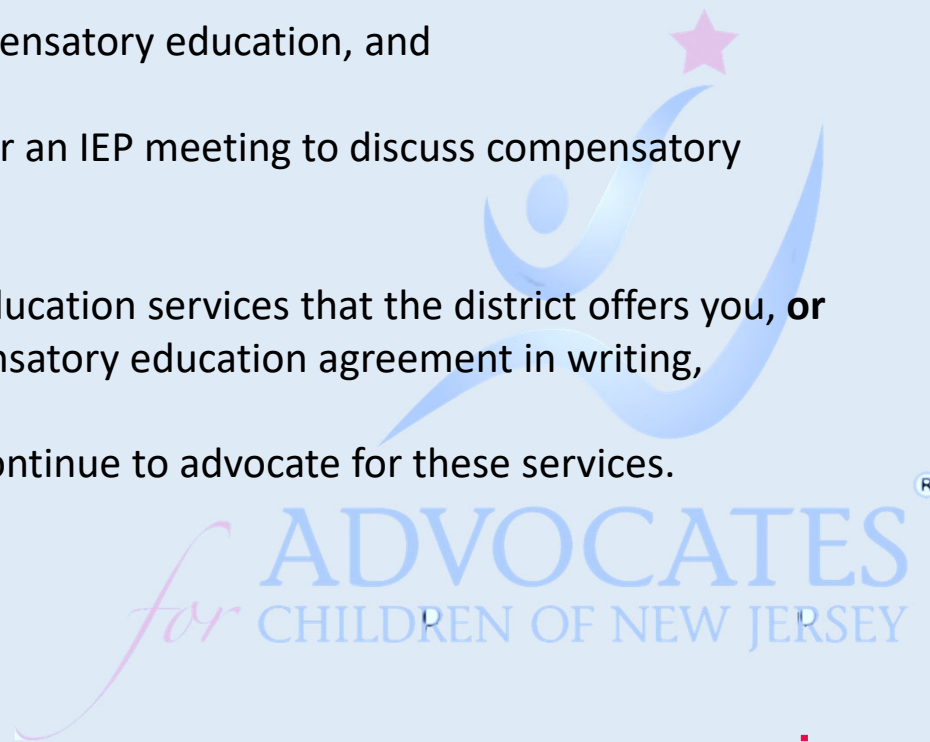
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## What if I Can't Resolve the Compensatory Education Issues?

If you believe that your child may be eligible for compensatory education, and

- the school does not respond to your request for an IEP meeting to discuss compensatory education, **or**
- the school refuses to hold an IEP meeting, **or**
- you are not satisfied with the compensatory education services that the district offers you, **or**
- the school does not provide you with a compensatory education agreement in writing,

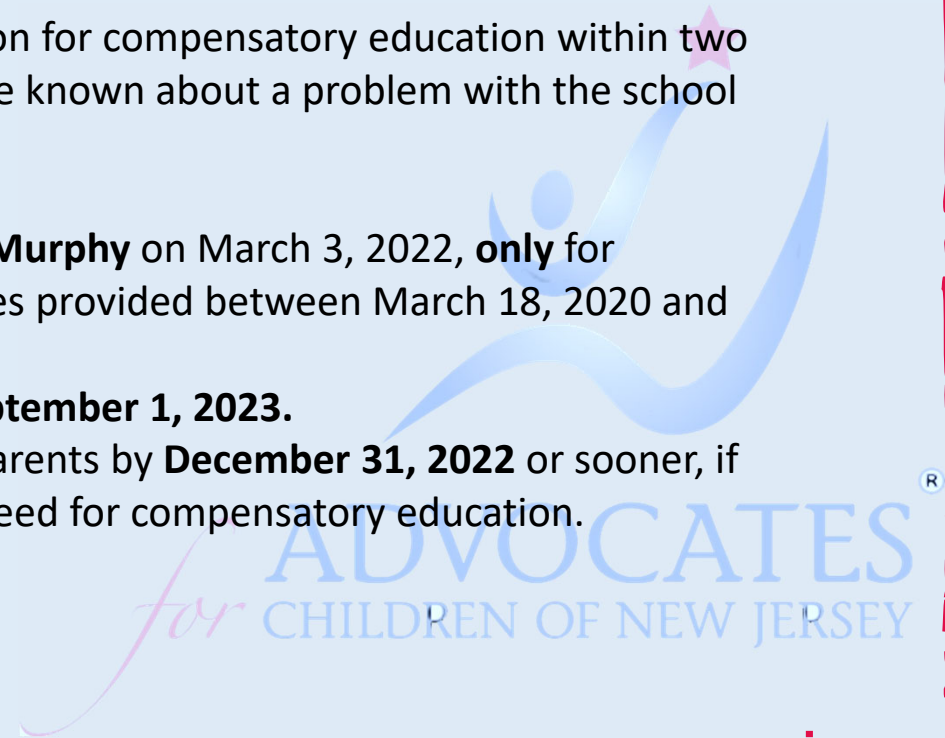
You must file a **Petition for Due Process** to continue to advocate for these services.



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# Deadline for Filing Compensatory Education Claims

- In general, parents must file the due process petition for compensatory education within two years from the date the parent knew or should have known about a problem with the school services.
- **A new pandemic-related law signed by Governor Murphy** on March 3, 2022, **only** for compensatory education claims based upon services provided between March 18, 2020 and September 1, 2021:
  - Permits parents to file a complaint up until **September 1, 2023**.
  - Requires the child study teams to meet with parents by **December 31, 2022** or sooner, if parents request a meeting, to discuss the need for compensatory education.



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## What if I Can't Resolve the Compensatory Education Issues?

- To file a Due Process complaint, fill out the Parental Request for Due Process Hearing form (see link in Resources).
- The New Jersey Office of Special Education programs (OSEP) will accept electronic requests sent as a PDF attachment emailed to [osepdisputeresolution@doe.nj.gov](mailto:osepdisputeresolution@doe.nj.gov) or by mail to:

**Director  
New Jersey Department of Education  
Office of Special Education Programs  
P.O. Box 500  
Trenton, NJ 08625-0500**

\*Make sure to follow **ALL** instructions and **complete all sections**, including indicating that you sent a copy of this Petition to the Superintendent. Include name and address..

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## The Due Process Complaint For Compensatory Education Must Include:

- A statement that the school violated State and Federal laws and guidance.
- **A statement of your child's right to compensatory education regarding COVID-19 issues based upon:**
  - An allegation of school's "material failure" in the implementation of an IEP, meaning more than a "minor discrepancy" between the services required and those received; and/or
  - An allegation that school did not provide the student with a Free Appropriate Public Education (FAPE) to the "greatest extent possible" during COVID-19 as required by the USDOE and NJDOE, the IDEA and New Jersey Education Regulations.

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## The Due Process Complaint For Compensatory Education Must Include:

- A statement of the reasons you are filing a due process complaint – stating the facts and time period when alleged violations occurred:
  - Based on your records, list each service/program, for example: related services, an aide or in-person instruction that were supposed to be provided, the required frequency and length, versus what was actually provided and your best calculation of how many hours/sessions are owed.
  - List any other violations, such as the delay in CST conducting initial or re-evaluations, etc.
- A statement of how to resolve the case – what specific remedy the parent is seeking.

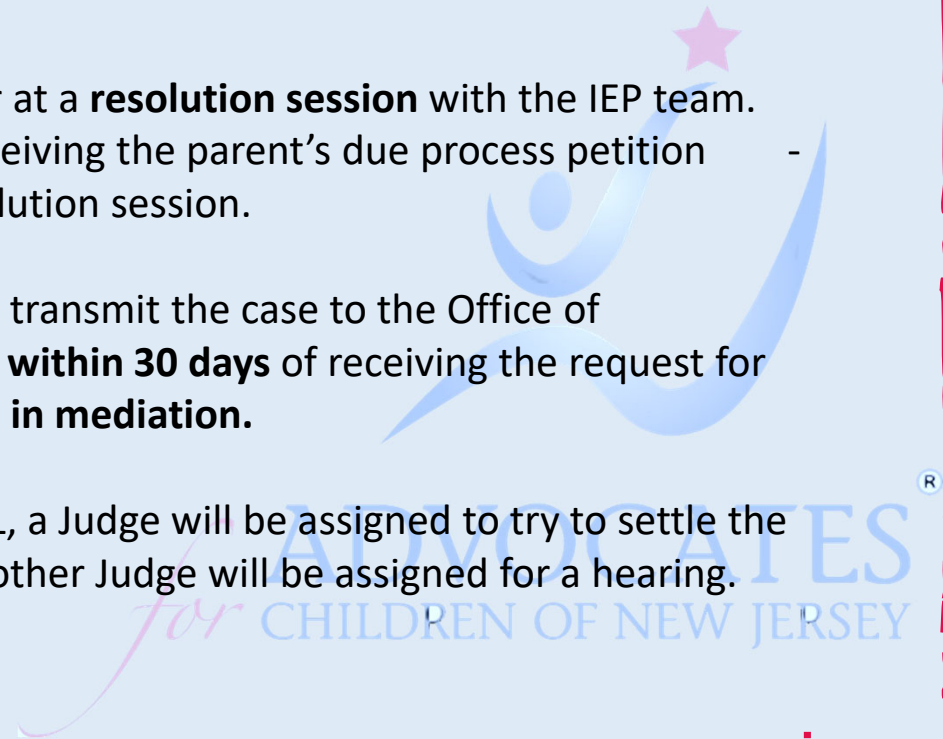
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## What Happens After The Filing?

- The school and parent can try to resolve the matter at a **resolution session** with the IEP team. which must occur **within 15 days** of the school receiving the parent's due process petition -  
- unless both parties agree to waive the resolution session.
- If a resolution session does not occur, the OSEP will transmit the case to the Office of Administrative Law (OAL) for a due process hearing **within 30 days** of receiving the request for due process **unless the parties agree to participate in mediation.**
- If mediation fails and the case is transmitted to OAL, a Judge will be assigned to try to settle the case at a settlement conference and if this fails, another Judge will be assigned for a hearing.





## Filing For Due Process Relating To High School Graduation

- If you do not agree with your school's decision that your child is ready to graduate and you and CST can not agree upon an IEP for the next school year, **you must file for Due Process and request Stay-Put prior to the school year's high school graduation date.**
- Your child may be eligible for additional education if:
  - IEP goals were not met or due to your child's academic, functional and/or transition needs;
  - compensatory education rights; or
  - your child will turn 21 during the 2021-2022 or 2022-2023 school year, in accordance with .New Jersey law S3434, which was passed in June 2021
- **Stay-Put** is the right for a student to stay in the current placement and/or to continue to receive current IEP services until a Judge enters an Order in the Due Process case or the parties sign a settlement agreement.

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## Resources

NJDOE's Parental Rights in Special Education

<https://www.nj.gov/education/specialed/form/prise/>

Due Process/ Mediation Petition (English and Spanish):

<https://www.nj.gov/education/specialed/due/>

US DOE Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (Published March 2020)

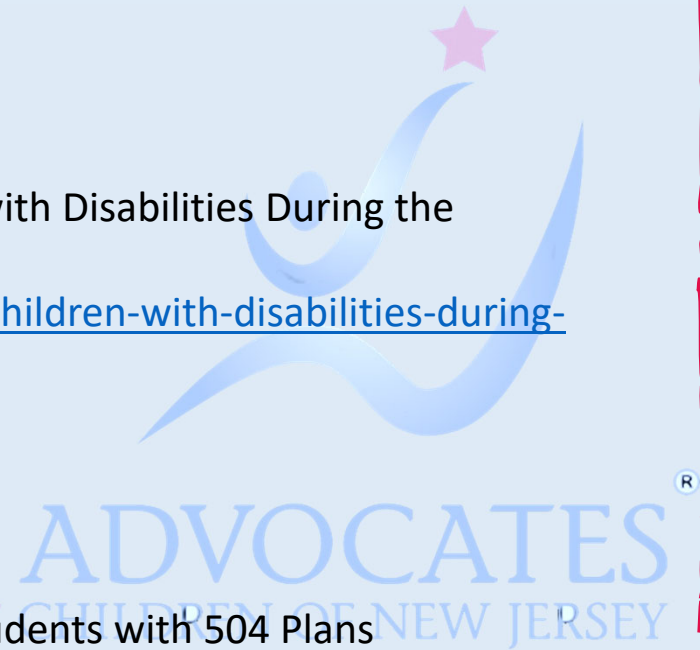
<https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/>

NJDOE's The Road Back (Published June, 2020)

<https://www.nj.gov/education/reopening/NJDOETheRoadBack.pdf>

USDOE Fact Sheet Regarding Compensatory Education Rights of Students with 504 Plans

<https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html>

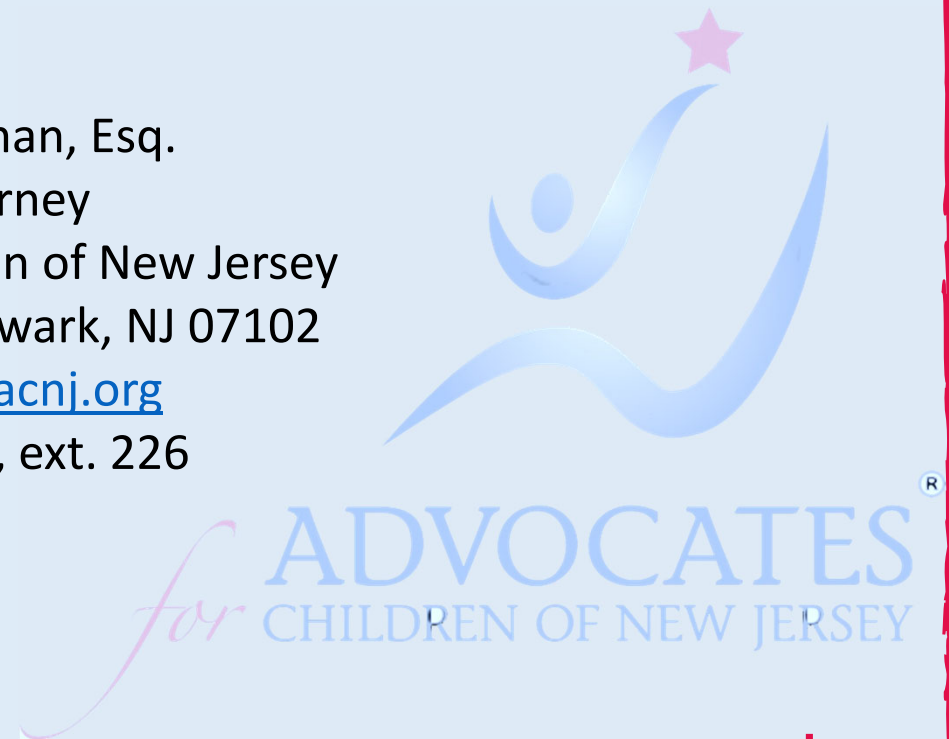


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# THANK YOU FOR ATTENDING!

For more information about legal rights and processes, you may contact:

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