



# Beyond COVID-19 School Closures: Questions For Students With Existing IEPs Or Section 504 Plans

## Can a student with a disability stay in school after age 21, due to the pandemic?

**Yes.** In June, 2022 Governor Hochul [signed a new law](#)<sup>1</sup> which clarifies that schools are allowed to continue providing instruction and services to students with disabilities who turned 21 during the 2021-22 school year. Students in New York State have the right to attend high school until the end of the school year in which they turn 21. Students with disabilities also have the right to receive transition services—such as job training or support developing independent living skills—to help them prepare for life after high school. However, during the pandemic, many older youth with disabilities had limited access to the special education supports and services needed to help them successfully transition to adult life. The new law makes clear that schools can give students with disabilities who receive special education services pursuant to an individualized education program (IEP), and who would otherwise “age out” in June 2022, more time to finish high school. The students will be able to finish their education plans in the 2022-23 and 2023-24 school years or until they turn 23 years old, whichever first occurs.

<sup>1</sup> <https://www.nysenate.gov/legislation/bills/2021/S7866>

## Is my child entitled to receive Compensatory Education for missed services due to COVID-19 school closures?

Possibly. The School District’s Committee on Special Education (“C.S.E.”) should make individual decisions about compensatory or extended school year services, including services to make up for any skills the student lost.

If you think that your child needs compensatory services, document the services your child was receiving before the closure, services offered during the closure, and your child’s access to materials and education. Also, document any regression your child experienced. Keep records of the dates and times when services were provided and the dates when they were not provided. (Compensatory services are services required to remedy any educational or other deficits that result from the student with a disability not receiving the evaluations or services to which they were entitled<sup>2</sup>.)

<sup>2</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html>

## What are the options for special education students who cannot learn well in a virtual environment?

New York State Department of Education instructed districts to prioritize in-person services for high-needs students with disabilities whenever possible.

Districts must also determine how special education programs and services will be delivered to meet the needs of students with disabilities in both remote learning and in-person instructional models. This must be considered in the event of future school closures.

**NYSED** - New York State Education Department  
**C.S.E.** - Committee on Special Education  
**I.E.P.** - Individualized Education Program  
**D.P.C.** - Due Process Complaint  
**IDEA** - Individuals with Disabilities Education Act  
**I.H.O.** - Impartial Hearing Officer



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## Will Committee on Special Education (“C.S.E.”) meetings be held if schools are not open for in-person instruction?

Yes. The C.S.E. must meet at least once each school year to conduct an “Annual Review” of each student’s I.E.P. 34 C.F.R. §300.324(b)(1). A C.S.E. does not have to meet in person. Parents/guardians and the C.S.E. may agree to conduct C.S.E. meetings through other means, including videoconferencing or phone calls. 34 C.F.R. §300.328.

Suppose the parent/guardian and District agree to change a child’s I.E.P. after the Annual C.S.E. meeting. In that case, they may amend or modify the child’s current I.E.P. in writing without meeting again—34 C.F.R. §300.324(a)(4)(i).

## I disagree with the I.E.P. – Is there anything I can do?

**Yes.** Parents/guardians can make a Due Process Complaint (D.P.C.) or a State Education Complaint challenging their child’s I.E.P. as a denial of a Free and Appropriate Public Education. A State Education Complaint and a D.P.C. may not be brought at the same time. Generally, parents/guardians have two years from when they knew or should have known, of a violation of the IDEA to request a due process hearing [20 U.S.C. §1415(f)(3)(C)] and a State Education Complaint must allege a violation within the past year.

A Due Process Complaint is made by a parent who is requesting an impartial hearing. For more information on requesting an impartial hearing, please refer to the NYSED’s Q&A on Impartial Due Process Hearings for Students with Disabilities.

<https://www.p12.nysed.gov/specialed/dueprocess/documents/impartial-hearing-guidance-jan-2018.pdf>

A State Education Complaint is defined by NYSED as “a written, signed statement of an allegation that a local or State educational agency (e.g., school district or other public agency) has violated a requirement of federal or New York State (NYS) law or regulation relating to the education of students with disabilities”. More information on this process can be found on the NYSED website: <http://www.nysed.gov/special-education/state-complaint>

## Does the COVID-19 crisis continue to impact special education deadlines?

Yes. “[P]ublic agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate.” The New York State Education Department (“N.Y.S.E.D.”) announced that several deadlines will not include days schools are closed because of COVID-19:

- 60 Day Deadline to Provide Special Education Program and Services Doesn’t Include Closure Days
  - New York State Commissioner’s Regulation §200.4(d) normally requires a Board of Education to provide appropriate programs and services within 60 school days of receipt of a consent to evaluate or referral for review. The 60-day deadline will not include any days the school is closed due to COVID-19.
- 30 Day Deadline for Private Placement Doesn’t Include Closure Days
  - New York State Commissioner’s Regulation §200.4(e)(1) normally requires a Board of Education to arrange for placement at an approved private school within 30 school days of the C.S.E.’s recommendation. The 30-day time period will not include any days the school is closed due to COVID-19.



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## Impartial Hearings

An Impartial Hearing Officer\* (I.H.O.) may receive testimony by video. I.H.O.s may conduct special education due process hearings by video conference. Commissioner's Regulation §200.5(j)(3)(xii)(h). (\*The IHO is not an employee of the school district or NYSED and is specifically trained to hear and decide special education cases.)

I.H.O.s may extend cases. Each extension shall be for no more than 30 days; except that if schools are closed pursuant to an Executive Order issued by the Governor pursuant to a State of Emergency for the COVID-19 crisis, an extension may be granted beyond 30 days for the length of time schools are closed but no more than 60 days. No more than one extension at a time may be granted. The reason for each extension must be documented in the hearing record. Extensions must still be made at the request of the school district or the parent. I.H.O.s may not grant extensions on their own behalf or grant extensions unilaterally. Commissioner's Regulation §200.5(j)(5)(i).

## Have there been any changes to classification terminology?

The New York State Board of Regents approved permanent amendments to sections 200.1 and 200.4 of the Regulations of the Commissioner of Education to change the term "emotional disturbance" to "emotional disability". Christopher Suriano, Assistant Commissioner of the NYS Office of Special Education states this change was made "as the result of stakeholder engagement discussions, survey responses, and the analysis of public comment". For more information on these amendments, please see the July 2022 official memorandum from the Office of Special Education:

<http://www.nysed.gov/common/nysed/files/special-education/memo/emotional-disability-replacement-term-for-emotional-disturbance.pdf>

**For more information about special education issues, please call  
the Education and Disability Rights Project (EDRP) at (516) 292-8100.**

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