



STATE OF NEW JERSEY

# DEPARTMENT OF EDUCATION

A Memo from the New Jersey Department of Education

Date: April 30, 2020

To: Chief School Administrators, Charter School and Renaissance School Project Leads, Administrators of Approved Private Schools for Students with Disabilities, Nonpublic School Administrators

Route To: Directors of Special Education

From: Peggy McDonald, Ed.D., Assistant Commissioner  
Division of Student Services

## Parental Waivers for the Delivery of Remote or Virtual Special Education and Related Services

The New Jersey Department of Education (NJDOE) has become aware of instances in which school districts are requiring parents or guardians to waive certain legal rights or give written consent for services as a condition for receipt of special education or related services. The purpose of this memo is to clarify that these practices violate the *Individuals with Disabilities Education Act (IDEA)* and NJDOE regulations.

Consistent with the [guidance](#) previously issued by the NJDOE as well as [guidance](#) issued by the U.S. Department of Education during the COVID-19 public health emergency, school districts must implement a student's Individualized Education Program (IEP) to the greatest extent possible. Requiring the execution of a waiver or release of present or future claims as a condition to implement a student's IEP is prohibited.

### Waivers

The federal *IDEA* and New Jersey's special education regulations require school districts to provide a free and appropriate public education to students with disabilities through the provision of special education and related services. The *IDEA* and the state's regulations guarantee specific substantive and procedural rights to students with disabilities related to their educational programs, services, and placements. Neither the *IDEA* nor the state's special education regulations require or allow for the waiver of present or future claims, including claims to compensatory services, in order for students with disabilities to receive the services to which they are entitled as determined by the student's IEP. These entitlements include related services through telehealth, telemedicine, electronic communications, remote, virtual, or other online platforms. Additionally, a key right guaranteed by both the *IDEA* and the state's regulations is the right to disagree with a school district's determination or action concerning the educational program of a student with a disability utilizing various dispute resolution options, including but not limited to facilitated IEP meetings, local resolution sessions, mediation conferences, due process hearings, and complaint investigations.

To the extent a student may be entitled to compensatory services following the extended school closures, the need for such services is an individual determination made by the student's IEP team, which includes the student's parent(s)/guardian(s). School districts should begin now to consider how the extended school closures may affect students' progress toward IEP goals to determine whether compensatory services are needed.

### Written Consent for Services

There is no requirement in the New Jersey special education regulations, including the rule modification adopted by the State Board of Education on April 1, 2020, that school districts obtain written parental consent prior to the delivery of special education and related services through remote, virtual or online platforms. The circumstances in which parental consent is required are addressed at *N.J.A.C. 6A:14-2.3(a)*.

It is important to note that while parental consent is required prior to the implementation of the student's initial IEP, parental consent is not required prior to the delivery of special education and related services included in a subsequent IEP, including the student's IEP in effect during COVID-19 if written notice was previously provided and the parent did not formally disagree with the proposed IEP prior to its implementation. Accordingly, school districts may not require additional parental consent prior to implementing a student's IEP using remote, virtual, or online platforms during COVID-19.

Information about the impact of COVID-19 on students with disabilities is available on the NJDOE's [COVID-19 webpage](#). Additionally, staff from the NJDOE Office of Special Education and the Office of Special Education Policy and Dispute Resolution are available as resources to support districts, educators, and families. Please forward questions or comments regarding this memo or other issues related to special education to the state's [Special Education Ombudsman](#), who serves as a resource to provide information and support to parents, students and educators regarding special education rights and services, or contact the county special education specialist in your local area. More information is available on the NJDOE [Special Education webpage](#).

c: Members, State Board of Education  
Lamont O. Repollet, Ed.D., Commissioner  
NJDOE Staff  
Statewide Parent Advocacy Network  
Garden State Coalition of Schools  
NJ LEE Group