



# Act 66 of 2021 - Student Grade Level Retainment Guidance

On June 30, 2021, Governor Tom Wolf signed Act 66 of 2021 (Act 66) into law. Act 66 permits students that were enrolled during the 2020-21 school year to repeat their grade level in an effort to make up for any lost educational opportunities due to the COVID-19 pandemic, even if the student met the requirements to be promoted to the next grade level. Parents/guardians and students, at or over the age of 18, have until July 15, 2021, to elect to have their child or themselves repeat a grade level for the 2021-22 school year. Throughout this guidance document, these students are referred to as "students repeating a grade level."

Additionally, Act 66 permits students with disabilities who were enrolled during the 2020-21 school year and turned age 21 during the 2020-21 school year, or between the end of the 2020-21 school year and the beginning of the 2021-22 school year, to attend a school entity during the 2021-22 school year and receive services as outlined on their most recent Individualized Education Program (IEP) with all the protections under the Individuals with Disabilities Education Act (IDEA). Throughout this document, these students are referred to as "students staying an additional year."

This guidance provides school entities with a summary of considerations regarding families' decisions to repeat a grade level or remain an additional year for the 2021-22 school year. This guidance is not intended to provide legal advice - school entities should consult with their legal counsel.

Act 66 applies to students enrolled in any of the following school entities in Pennsylvania during the 2020-21 school year: a school district, intermediate unit, career and technical education center, charter school, cyber charter school, regional charter school, nonpublic school, approved private schools, and chartered schools for the deaf and blind.

## Form

Parents/guardians interested in re-enrolling their child under the above options for the 2021-22 school year must submit the Act 66 of 2021 Student Grade Level Retainment Notification Form to the district and/or school that the student will attend in the 2021-22 school year on or before July 15, 2021. **Do not submit this form to the Pennsylvania Department of Education (PDE).**

## Answers to FAQs

The Pennsylvania Department of Education (PDE) has prepared answers to questions in regard to Act 66 of 2021, which are available below.

**If a student graduated having met their Chapter 4 graduation requirements, should the student repeat a grade level?**

No. Students who graduated in accordance with a school entity's graduation requirements set pursuant to Chapter 4 should not re-enroll in school.

**If a parent/guardian wishes for their child to repeat a grade level but misses the July 15, 2021, timeline for submitting a request per Act 66, what are their options to request this option?**

Parents/guardians should contact their child's school to discuss options for their child based on the school's established policies and procedures.

**Does this law permit preschoolers to repeat a year?**

No. The law allows students to repeat a grade level, and preschool is not considered a grade level.

**If a student with a disability met Chapter 4 graduation requirements or met their IEP goals and objectives, should the student repeat a grade level?**

No. Students with disabilities who graduated in accordance with a school entity's graduation requirements set pursuant to Chapter 4 graduation requirements, or by meeting goals and objectives as outlined in their IEPs, should not re-enroll.

**What if a student with a disability decides to stay for an additional year, but the student already received a diploma solely by virtue of aging out (age 21)?**

If a student received a diploma solely by virtue of aging out, the student should be permitted to enroll for the 2021-22 school year.

## **Special Education**

The questions and answers below are specific to Special Education processes and procedures relevant to Act 66.

### ***Process and Procedure Questions and Answers***

**Does this law require school entities to provide Extended School Year services (ESY) during the Summer of 2022 to those students with disabilities who stay an additional year?**

Because the law requires school entities to implement the most recent IEPs of those students who stay an additional year, if a student's most recent IEP contains ESY, then school entities should provide it over the summer of 2022.

**What if a student with a disability who has reached the age of majority is unable to provide approval or consent to stay an additional year?**

In accordance with 34 C.F.R. § 300.520, IDEA rights of parents transfer to students at the age of majority. Under Pennsylvania law, the age of majority for purposes of special education is 21 years. In the event a student with a disability is unable to provide approval or consent to stay an additional year, the student's parent or guardian should follow the process of securing educational decision-making rights.

**Should the decision to repeat a grade level or stay an additional year be made by IEP teams?**

For the decision to repeat a grade level, the law indicates that the decision is to be made by a parent or guardian for students under 18 years of age and by the student who is at or over 18 years of age. For the decision to remain an additional year, the law indicates that the decision is to be made by a parent or guardian and the student. If possible, PDE's Bureau of Special Education *recommends* all decisions made for students with disabilities be made in conjunction with the IEP team and after a review of data.

**Must local education agencies (LEAs) revise IEPs for students with disabilities who are repeating a grade level or staying for an additional year?**

IEPs should be revised in accordance with the circumstances set forth in 34 C.F.R. § 300.324(b).

**Must LEAs complete re-evaluations for students with disabilities who are repeating a grade level or staying for an additional year?**

Re-evaluations should occur in accordance with the circumstances set forth in 34 C.F.R. § 300.303(a).

**Must LEAs issue Notices of Recommended Educational Placement/Prior Written Notices (NOREP/PWN) solely if students with disabilities decide to repeat a grade level or stay an additional year?**

No. NOREP/PWNs should be issued in accordance with the prior written notice requirements set forth in 34 C.F.R. § 300.503.

**Do the age range restrictions in Chapter 14 of the Pennsylvania Code apply for the 2021-22 school year?**

Yes. In accordance with 22 Pa. Code § 14.146, a student with a disability may not be placed in a class in which the chronological age from the youngest to the oldest student exceeds these limits, unless an exception is determined to be appropriate by the IEP team of that student and is justified in the IEP.

**Does a student with a disability who is staying for an additional year count towards the caseload *limitations* in Chapter 14 of the Pennsylvania Code?**

No. In accordance with 22 Pa. Code § 14.105, caseload limitations apply only to students with a disability. 22 Pa. Code § 14.101 defines "student with a disability" as a child of *school age* who meets the criteria in 34 C.F.R. § 300.8.

22 Pa. Code § 11.12 defines "school age" as ending upon graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first. These students should be included on caseloads.

**Do the facility restrictions in Chapter 14 of the Pennsylvania Code include a student with a disability who is staying for an additional year?**

Yes. In accordance with 22 Pa. Code § 14.144(3)(v), each special education class must be composed of at least 28 square feet *per student*.

*Data and Fiscal Questions and Answers*

**Should LEAs report students with disabilities who are staying for an additional year in the 2021-22 October 1 Child Count, December 1 Child Count, and the July Submission PIMS Collections?**

Yes.

**Should LEAs include students with disabilities who are staying for an additional year in their Act 16 reporting?**

Yes.

**Are LEAs eligible to receive Basic Education Funding (BEF) and Special Education Funding (SEF) for students with disabilities who are staying for an additional year?**

Yes.

**Are LEAs eligible to receive IDEA funding for students with disabilities who are staying for an additional year?**

LEAs will receive IDEA funding for those students with disabilities who stay an additional year if they are reported in the 2021-22 December 1 Child Count PIMS Collection and are 21 years of age when reported.

**What if an LEA has already marked a student with a disability who elects to stay an additional year as a student leaver for purposes of the Pennsylvania Post School Outcome Survey (PaPOS)?**

If a school district has already marked a student with a disability as a leaver and the student has already completed the PaPOS but elects to stay an additional year, they will be removed from the sample during the post process and should be part of the PaPOS process for the following school year.